92-488

Supreme Court, U.S.
FILED
SEP 17 1992
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No. _____

In The

Supreme Court of the United States

October Term, 1992

SANDRA SEEFELD,

Petitioner,

versus

CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO.,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI AND APPENDIX VOLUME I

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QUESTIONS PRESENTED

1. Did the District Court (Fifth Circuit Court of Appeals) err, when it imposed upon Petitioner its requirements of the RICO Standing Order, and then subsequently and summarily denies a RICO cause of action after compliance with the RICO Standing Order?

2. Did the District Court (Fifth Circuit Court of Appeals) err when it held, in effect, in conflict with the Supreme Court, "Each office is independently owned and operated" equates with the "Warning Label", *Cipollone v. Liggett Group, Inc.*, 112 S.Ct. 2608 (1992), and preempts advertising claims under RICO, 18 U.S.C. §1962(a)(c)(d), §1964(c), §1341, and particularly §1343, Use of Federal Airwaves; and La. Rev. Stat. Ann. §51:1405, Unfair and Deceptive Trade Practices?

3. Did the District Court (Fifth Circuit Court of Appeals) err when it held, in conflict with other court of appeals, that a corporations(s) may not form an association in fact under RICO?

4. Does 18 U.S.C. §1964(c) loss to business and property include Intellectual, Artistic and Literary Property damages?

5. Did the District Court (Fifth Circuit Court of Appeals) err when it held, in conflict with other court of appeals, that Local Rules 2.10E&W over rules Fed. R. Civ. P. 56(c) and/or Fed. R. Evid. 1006 by its failure to allow the filing of an Affidavit and voluminous exhibits also violate Petitioner's U.S. Const. V amend. rights?

QUESTIONS PRESENTED – Continued

6. Did the District Court (Fifth Circuit Court of Appeals) err when it, in conflict with other court of appeals, refused to admit proof that a defendant's misrepresentations which furthered the scheme and other schemes were involved in a conspiracy to defraud?

7. Did the District Court (Fifth Circuit Court of Appeals) err when it held, in conflict with other court of appeals, that an association in fact enterprise composed of two named defendants was not sufficiently distinct from other defendants?

8. Did the District Court (Fifth Circuit Court of Appeals) err when it, in conflict with other court of appeals, refused to admit proof that a defendant's misrepresentations which furthered the scheme and other schemes were involved in a conspiracy to defraud?

9. Did the District Court (Fifth Circuit Court of Appeals) err in granting summary judgments when it held, in conflict with other court of appeals, the Appellees do not have to meet the burden of proof under Fed. R. Civ. P. 56?

10. Did the District Court (Fifth Circuit Court of Appeals) err, in conflict with other court of appeals, when it improperly applied the six step "Continuity Plus Relationship" test as set forth in *H. J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229 (1989) in order to establish whether a "pattern" was present?

11. Did the District Court (Fifth Circuit Court of Appeals) err, in conflict with other court of appeals, indirectly overrule *R.A.G.S. Couture, Inc. v. Hyatt*, 774 F.2d 1350 (5th Cir. *en banc* 1985)?

QUESTIONS PRESENTED – Continued

12. Did the District Court (Fifth Circuit Court of Appeals) err, when it assumes factual questions to be true that are incorrectly stated in spite of being directly contradicted by affidavit, depositions, interrogatories and pleadings or is this a proper question for a jury?

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PETITION FOR WRIT OF CERTIORARI

To The Honorable Chief Justice and the Associates Justices of the Supreme Court of the United States,

MAY IT PLEASE THE COURT:

Petitioner, Sandra Seefeld, respectfully prays that a Writ of Certiorari issue to review the Opinion and Judgment of the United States Court of Appeals for the Fifth Circuit entered in this matter on June 18, 1992.

OPINIONS AND JUDGMENT BELOW

The Order of the United States District Court for the Eastern District of Louisiana, dated March 19, 1990, is reprinted in the Appendix to this Petition at App. 62; dated September 12, 1990, is reprinted at App. 63; dated April 16, 1991, is reprinted at App. 78; dated June 10, 1991, is reprinted at App. 79-80; dated July 9, 1991, is reprinted at App. 82; dated July 9, 1991 is reprinted at App. 83-84; dated July 8, 1991, is reprinted at App. 85-86; dated August 28, 1991, is reprinted at App. 191-199; and the Judgment of the United States District Court for the Eastern District of Louisiana, dated August 28, 1991, is reprinted at App. 200-201; the Amended Judgment of the United States District Court for the Eastern District of Louisiana, dated September 10, 1991, is reprinted at App. 202-203; the Amended Judgment of the United States District Court for the Eastern District of Louisiana, dated August 28, 1991, is reprinted at App. 200-201; dated September 16, 1991 is reprinted at App. 235-236; the Opinion of the three-judge panel of the United States Court of

Appeals for the Fifth Circuit, entered on June 19, 1992, unreported, is printed in the Appendix to this Petition at App. 239-240.

STATEMENT OF JURISDICTION

This Petition for a Writ of Certiorari was filed within ninety days of June 18, 1992, the date of entry of the Court of Appeals' Opinion.

The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND FEDERAL STATUTORY PROVISIONS INVOLVED

United States Constitution: amend. V.

The statutory provisions involved in this case are the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §§1961, 1962 and 1964; Mail and Wire Fraud, 18 U.S.C. §§1341 and particularly §1343, Airwaves; and La. Rev. State. Ann. §51:1405;

Federal Rules: Fed. R. Civ. P. 8(a)(2); Fed. R. Civ. P. 30(b)(6); Fed. R. Civ. P. 56(c); Fed. R. Civ. P. 83; Fed. R. Evid. 1006; and Local Rules 2.10E&W.

STATEMENT OF THE CASE

This is a civil RICO action brought against Century 21 Real Estate Corporation (hereinafter "C 21 REC") and numerous other individuals and corporate Respondents.

Petitioner averred that all Respondents have engaged in acts, practices and conduct which constitute violations of 18 U.S.C. §1961 *et seq.*; 1962(a)(c); 18 U.S.C. §1341; and particularly §1343, Airwaves.

Petitioner filed a complaint in the District Court against C 21 REC and other Respondents alleging civil RICO violations and pendant state causes of action for breach of fiduciary obligations, misrepresentations, breach of contract, duress and unfair and deceptive trade practices. Pursuant to the RICO Standing Order Petitioner also filed a RICO Case Statement further outlining the claims against all Respondents. This RICO Case Statement included a description of the predicate *pattern* [emphasis supplied] acts alleged against C 21 REC and various descriptions of possible enterprises, App 9. Petitioner further filed an Amended and Supplemental Complaint outlining the four *enterprises* [emphasis supplied] including legal entities.

Petitioner has pled with particularity an *enterprise* [emphasis supplied]. Petitioner, in fact, has pled the existence of four *enterprises* [emphasis supplied] in her Memorandum in Opposition to Motion for Judgment on the Pleadings, App. 23-60.

The Local Rules require that a RICO Case Statement be filed in conjunction with a RICO Complaint. Both pleadings, the Complaint and Case Statement, outlined

these various entities, actions and structures. These pleadings outlined entity, structure, specific actions and motives. Some conclusory allegations are made in the pleadings, the majority of allegations are of specific facts. Petitioner has clearly pled *enterprise* [emphasis supplied] within the confines of *Old Time Enterprises, Inc. v. International Coffee Corp.*, 826 F.2d 1213 (5th Cir. 1989).

The enterprise as it relates to Respondent, C 21 REC, the RICO Case Statement stated Respondent, C 21 REC, had established a nationwide network of real estate agents and brokers designed to handle all matters involved in the purchase and/or sale of a home.

The Order of the District Court dated March 19, 1990, denied Respondent's, Flannery's, Motion for Judgment on the Pleadings stating the Complaint and RICO Case Statement sufficiently alleged both *enterprise* [emphasis supplied] and a RICO cause of action,

> The Court finds that plaintiff (Sandra Seefeld) has stated a cause of action against the *defendants* [emphasis supplied] under the Racketeer Influenced and Corrupt Organization Act (RICO), App. 62.

Petitioner has provided the District Court with an *Activity Chart*, App. 73-74, outlining the enterprises and the *Pattern of Racketeering Activity* engaged in by all Respondents, App. 75-77.

A *RICO Enterprise Flow Chart*, App. 266, clearly shows Respondent, C 21 REC, as the Rico Enterprise effecting interstate commerce under 18 U.S.C. §1962(a) and as a *principal* [emphasis supplied] participant, 18 U.S.C. §1962(c), as Trustee for the National Advertising

Fund and indicates receipt of funds from a *pattern of racketeering activity* [emphasis supplied] by other Respondents which is separate and distinct from the RICO enterprise. This Chart is more fully described in Petitioner's deposition, App. 267-70,

> Q. Are you alleging that Century 21 Real Estate Corporation is the Rico Enterprise?
>
> A. It is the RICO Enterprise effecting interstate commerce directly.

Petitioner believes knowing, wrongful intent and conduct by the perpetrator, in fact knowing deceit and reckless disregard of the truth, caused Petitioner's reliance upon false representations in misleading advertising which were explicit and demonstrably false statements; which in turn generated income for the corporation at issue, sufficiently alleges injury under 18 U.S.C. §1962(a).

The RICO Case Statement, App. 1-17, also properly alleges injury to Petitioner's business and property, 18 U.S.C. §1964(c) required under 18 U.S.C. §1962(a).

Petitioner had requested the District Court which never ruled on Respondent's, C 21 REC's, General Objection to the definition of "you" and "your" as set forth in Petitioner's Request for Production of Documents. This definition reads in full as follows:

> *You* and *your* shall refer to C 21 REC, and your franchisees, particularly Don Smart & Associates and Parker-May & Associates, Marge Pearson, their successors, transferees and assigns, and/or their brokers/agents; or any person firm or corporation acting on your behalf.

Objection:

> C 21 REC has no contractual relationship with any of the individuals identified by plaintiff as falling within the definition of *you*. Further C 21 REC has no franchise agreements with any broker or agent. Instead C 21 REC has sub-franchise agreements with various regional sub-franchisors throughout the United States. It is these subfranchisors which, in turn, enter into franchise agreements with individual brokers or agents.

For the purposes of this litigation it is certainly appropriate to establish *you* and *your* as Respondent, C 21 REC, in connection with the Century 21 Franchisees' which are also named Respondents, Don Smart & Associates, Inc. and Century 21 Parker-May & Associates, Inc. This is a RICO suit where parties/respondents in violation of 18 U.S.C. §1962(c), are either *employed by* or *associated with* [emphasis supplied] the enterprise. Respondents, Don Smart & Associates, Inc. and Century 21 Parker-May & Associates Inc., obviously are *associated with* [emphasis supplied] one world-wide franchising organization, Respondent, C 21 REC.

REASONS FOR GRANTING THE WRIT

Did the District Court (Fifth Circuit Court of Appeals) err, when it imposed upon Petitioner its requirements of the RICO Standing Order, and then subsequently and summarily denied a RICO cause of action after compliance with the RICO Standing Order?

The District Court unequivocally said,

> The Court finds that plaintiff has stated a cause of action against defendants under the

Racketeer Influenced and Corrupt Organization Act (RICO). See Minute Entry March 19, 1990, App. 62.

The District Court came to this conclusion after a detailed RICO Case Statement, App. 1-17, was filed with the original complaint and amended RICO Case Statement, App. 64-72 was filed pursuant to the District Court's order.

The District Court required Petitioner to file a RICO Case Statement, App. 1-17, in basically the same form and substance as originally drafted by recently retired Judge Alvin I. Krenzler, (N.D., OH), in his RICO Standing Order, which was complied with. Nevertheless the Court dismissed Petitioner's RICO complaint for failure to state a RICO cause of action.

The only logical purpose for the District Court's action in dismissing the RICO cause is a purely punitive measure for one who dares to rely on the application of RICO Standing Order in a given situation.

Petitioner's contention is that the RICO Standing Order is not an order at all, but a rule of procedure. That being the case the rule or RICO Standing Order must be promulgated in compliance with Congress' delegation of legislative authority to be binding, valid and constitutional.

The crux of Petitioner's argument is that the United States Eastern District bench has exceeded and abused its rule making authority, as apparently it has a predilection to do, *Frazier v. Heebe*, 482 U.S. 641 (1987). In this case the Supreme Court admonished the instant bench to be mindful of the limitations on the rule making authority of

Courts, by reversing the lower Courts decision to uphold the onerous rules in question there.

Petitioner request this Court to take supervisory capacity of this matter and enforce its prior precedent, regarding the limitation of the rule making privilege of the lower Courts generally, and specifically in the instant case. Moreover this Court is called upon to curb the lower Courts' tendency to enforce their philosophy to narrow the reach of the Civil RICO statutes, which trumps this Court's precedent reserving the breadth of the statutes in question to Congress. In *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229 (1989), the Court said, "RICO may be a poorly drafted statute; but rewriting it is a job for Congress . . . ".

The lower courts' only justification for their rule making abuse is, in order to establish a uniform and efficient procedure for deciding RICO cases, on June 3, 1987, the District Court developed a RICO Standing Order, pursuant to which RICO plaintiffs are required to provide the District Court with specific information regarding their RICO allegations.

The District Court's desire to *establish a uniform and efficient procedure for deciding RICO cases* [emphasis supplied] is well and good, but it does not justify a sledge hammer approach to reach the goals in question. In issuing the RICO Standing Order, the en banc Court of the Eastern District of Louisiana, completely ignored Court's observation and admonishment in *Frazier, supra,* at 645-46,

> We begin our analysis by recognizing that a district court has discretion to adopt local rules that are necessary to carry out the conduct of its business. See 28 U.S.C. §§1654, 2071; Fed. Rule

> Civ. Proc 83. . . . A district court's discretion in promulgating local rules is not, however, without limits. This Court may exercise its inherent supervisory power to ensure that these local rules are consistent with " 'the principles of right and justice.' " *In re Ruffalo*, 390 U.S. 544, 554 (1968); . . . see *In re Snyder*, 472 U.S. 634, 643 (1985); *Theard v. United States*, 354 U.S. 278, 282 (1957); *Ex parte Burr*, 9 Wheat. 529, 530, 6 L.Ed. 152 (1824) [FN3] Section 2071 requires that local rules of a district court "shall be consistent with" the "rules of practice and procedure prescribed by the Supreme Court."
>
> . . . FN4 . . . "The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts and courts of appeals of the United States in civil actions . . . " 28 U.S.C. §2072. The local rules must also be consistent with Acts of Congress. 28 U.S.C. §2071.

In the instant case the entire federal bench of the Eastern District of Louisiana arbitrarily issuing a so-called RICO Standing Order which is in effect no order, but a rule, without attention being given to Supreme Court precedent, rules of practice and procedure or Acts of Congress. The Rule of Law is subrogated to the whim of the District Court. Placing a false facade, like RICO Standing Order above what is obviously a rule does not change things.

Petitioner submits that the RICO STANDING ORDER in question is objectionable for the reason, *inter alia*, that said order is in fact inconsistent with the Federal Rules, namely, Fed R. Civ. P. 8(a)(2) which requires a pleading to

only contain "a short and plain statement of the claim showing that the pleader is entitled to relief, . . . "

It is submitted that in theory, if the rules in question are allowed to flow in the adversarial context, the pleader will be disciplined to file appropriate pleadings or her complaint will not survive her adversaries' motions to dismiss, grounded on existing rules of practice and procedure. There is no need for an additional court made rule particularly one that in effect abrogated Acts of Congress and the rules of practice and procedure promulgated pursuant to legislative and Supreme Court authority. Equally important, the theme of the Federal Rules of Civil Procedure, i.e. notice pleading, should not be undermined without appropriate comprehensive legislation.

Furthermore, Court made rules and standing orders have the tendency to create non-uniformity (rather than uniformity as contended by the Courts in question) particularly when a rule is issued by a Court without attention to the formal rules of promulgation, and to the larger scheme of things in the context of a code of laws. This holds especially true in instances, where courts are attempting by Court order (standing orders) to impose a particular personal philosophy over congressional acts and jurisprudential precedent.

The lower courts in the instant case and generally have ignored all this. By fiat RICO Standing Order lower Courts have usurped the Supreme Court's exclusive authority, pursuant to precise delegation of authority from Congress, to prescribe rules of practice and procedure. Make no mistake the RICO Standing Order in question is not a mere local rule, but is inherently and in

effect a rule of practice and procedure, which transcends other rules of practice and procedure properly promulgated by the Supreme Court with Congress' imprimatur.

Many lower Courts, both district and appellate, have attempted to superimpose a strict, narrow, conservative blanket over the reach of Civil RICO, but each time such decisions reach the Supreme Court the strict construction and limitations of RICO are rejected. In *Sedima v. Imrex Co.*, 473 U.S. 479 (1985) this Court resoundly rejected lower court attempts to strictly construe the ambit of Civil RICO. In the instant case, the lower Courts had sought to impose impossible pleading requirements on Petitioner. First it orders Petitioner to file a RICO Case Statement and amended RICO Case Statement, then rules Petitioner

> . . . has stated a cause of action against defendants under the Racketeer Influenced and Corrupt Organization Act (RICO). See Minute Entry March 19, 1990, App. 62.

Then subsequently dismissed Petitioner's RICO complaint for failure to state a RICO cause of action under the test as set forth in *H.J. Inc., supra*. The test was in full force and effect, 1989, when the District Court found Petitioner had "a cause of action against defendants under the Racketeer Influenced and Corrupt Organization Act (RICO)", proving that the District Court completely ignored its own RICO Standing Order and Petitioner's RICO Case Statement and Amended Case Statement and all of the facts and evidence set forth within these various Court mandated pleadings.

Did the District Court (Fifth Circuit Court of Appeals) err when it held, in effect, in conflict with the Supreme Court, "Each office is independently owned and operated", App. 330, equates with the "Warning Label", *Cipollone v. Liggett Group, Inc.*, 112 S.Ct. 2608 (1992), and pre-empts advertising claims under RICO, 18 U.S.C. §1962(a)(c)(d), §1964(c), §1341, and particularly §1343, Use of Federal Airwaves; and La. Rev. Stat. Ann. §51:1405, Unfair and Deceptive Trade Practices?

Where Respondent, Century 21 Real Estate Corporation, is the *Trustee,* App. 307-08, in absolute control of and operating the National Advertising Fund generating racketeering funds from advertising schemes; which directly effect the C21 System™, App. 321, which determine the *Fair Market Value* of your *Neighborhood Specialist/ Professional's* listings, App. 311-15, resulting in excessively overvalued land sales transactions creating revenues of 6% and 2%, App. 309-10, that are reinvested into Respondent, Century 21 Real Estate Corporation, App. 244-47, and its captive National Advertising Fund, would its disclaimer protect itself from RICO liability. An enterprise that ask the public to *Put Your Trust in Number 1, Century 21* and reliance on Century 21 System's Advertising, Training, Products and Services, App. 217-22, which brings victims to " . . . the leading edge of what has literally exploded into the most serious institution disaster in the United States since the great depression of the 1930's." See *FSLIC v. Guy W. Olano,* No. 86-0472 (ED. La. 1986), Pre-Trial Order.

> As even Chief Justice Rehnquist has previously noted, white-collar crime in America is widespread and pervasive. The Justice Department has affixed a price tag of $200 billion to crime. This number perhaps drastically underestimates

> the share consumers will ultimately pay in aiding our failing Savings and Loan industry. President Bush's plan may, in sum cost consumers upwards of $157 billion. The cost of this S&L "bail-out" plan escalates by more than $1 billion monthly. At least four independent studies link a large percentage of this cost to fraud and insider abuse, two prevalent forms of criminal misconduct in the S&Ls. [Footnotes omitted] 65 *Notre Dame L. Rev.*, 1156-57 (1990).

Some of the very same Respondents in this matter were named for the same type of land flips, fraud and insider abuse in other matters, see *Fed. Sav. & Loan Inc. Corp. v. Murray*, 853 F.2d 1252 (5th Cir. 1988); *FSLIC v. Guy W. Olano*, No. 86-0472 (ED. La. 1986); *Drews v. Giangrosso*, 429 So.2d 198 (La. App. lst Cir. 1983).

> *Forbes* magazine reports that a well-crafted commercial these days costs between $125,000 and $1 million per 30 seconds of sales pitch, all of which is passed on to the consumer and is tax deductible. Just as well, our corporate friends could pass on the cost of truthful information.
>
> We should consider another ethic: Corporations ought not be permitted to use our airways to delude us with false images of themselves. We are entitled to be informed concerning the true character of the corporate advertiser, particularly if that corporation is a criminal. What of the corporation that knowingly injures its employees, dumps its waste on us, pollutes the air, and produces dangerous products it knows will injure us, but presents itself as a benign good neighbor? What of the corporation whose criminal offenses would reduce those of the FBI's worst public enemy to the magnitude of a pestering flea, but which portrays itself as a company of "just plain folks dedicated to serve

> you"? These corporations are like the carnivorous plant in nature that disguises itself to look like a flower it even smells like one and when the unsuspecting butterfly comes to visit, it entraps it and eats it.
>
> We are entitled to know the true character of our corporate advertisers. Telling the truth is a principle to which American business and, to some extent, in certain kinds of advertising. We demand even to know the most intimate details of the lives of our politicians. For centuries, the courts have permitted us to reveal the criminal record of a human felon who takes the stand to testify in his own defense. Why, when corporations take to the airways, are they not required to tell us the truth about their criminal records? At the beginning or end of every ad, like the screen credits that precede a movie, we should be provided a very readable and accurate account paid for by the corporate advertiser itself, of the record of convictions, if any, of the corporation and its subsidiaries. Gerry Spense, With Justice for None 307-08 1989.

Did the District Court (Fifth Circuit Court of Appeals) err when it held, in conflict with other court of appeals, that a corporations(s) may not form an association in fact under RICO?

The Eighth Circuit has the more acceptable opinion which should be the law and over rule the District Court (Fifth Circuit Court of Appeals) on this question when it found,

> Here, the enterprise and the person are not identical, as the appellants assert. The *enterprise* [emphasis supplied] in this case is an association in fact composed of five entities.[7] A collective entity is something more than the members of which it is comprised. If five persons form an

association in fact and engage in a pattern of racketeering activity such as drug smuggling and murder, an individual member could never be prosecuted for violating RICO under the appellants' reasoning because he or she would not be considered distinct from the enterprise. We do not believe that Congress envisioned that this type of conduct would be insulated from RICO prosecutions. Other courts confronted with this issue have reached identical results. *See, e.g., Perholtz*, 842 F.2d at 353-54; *Galerie Furstenberg v. Coffaro*, 697 F.Supp. 1282, 1287-88 (S.D. N.Y. 1988); *Conners v. Lexington Inc. Co.* 666 F.Supp. 434, 447-48 (E.D. N.Y. 1987).

[FN7] This court has never determined whether corporations can form an association in fact under RICO. We now join other circuits in holding that corporations may be considered associations in fact for purposes of RICO. *See e.g., United States v. Perholtz*, 842 F.2d 343, 353 (D.C. Cir.) (holding that individuals, corporations, and other entities may constitute an association in fact) (citations omitted), *cert denied*, ___ U.S. ___, 109 S.Ct. 65, 102 L.Ed.2d 42 (1988). Although section 1961(4) provides that an enterprise includes any union or group of individuals associated in fact, the statute's language is illustrative, not exhaustive. Also, we think it unwise policy to permit individuals to escape the reach of RICO through the simple artifice of incorporating. *Atlas Pile Driving Co. v. Dicon Financial Co.*, 886 F.2d 986 (8th Cir. 1989).

The same conclusion should have been drawn by the District Court (Fifth Circuit Court of Appeals) even if it found only a partial overlap between Respondents and the RICO enterprise,

> Where the overlap between defendants and the alleged RICO enterprise is only partial, a RICO

claim may be sustained. *See Cullen v. Margiotta*, 811 F.2d 698, 730, (2nd Cir.) (A defendant may be a "RICO person and one of a number of members of the RICO 'enterprise'."), *cert denied*, 483 U.S. 1021 (1987); *Richardson Greenshields Secs., Inc. v. Mui-Hin Lau*, 693 F.Supp. 1445, 1449 (S.D. N.Y. 1988). Under either reading the district court erred in dismissing the amended complaint for "fail[ure] to sufficiently alleged the existence of an 'enterprise' recognizable under RICO." *Jacobson v. Cooper*, 882 F.2d 717 (2nd Cir. 1989).

Did the District Court (Fifth Circuit Court of Appeals) err when it held, in conflict with other court of appeals, that Local Rules 2.10E&W over rules Fed. R. Civ. P. 56(c) and/or Fed. R. Evid. 1006 by its failure to allow the filing of an Affidavit and voluminous exhibits also violate Petitioner's U.S. Const. V amend. rights?

Local Rule 2.10E&W must be overruled in light of Fed. R. Civ. P. 56 since this Federal Rule allows the filing of affidavits prior to the day of hearing. The District Court refused an admitted voluminous filing of affidavits, depositions, charts, interrogatories and other evidentiary materials saying these records " . . . were lost business opportunities . . . ", App. 83. It is obvious the District Court, if in truth and fact personally looked at the presentation could not have come to this conclusion.

Does 18 U.S.C. §1964(c) loss to business and property include Intellectual, Artistic and Literary Property damages where the perpetrators are not infringers, licensees or contracting parties?

The answer is obvious,

. . . huge judgments in stultifying numbers have begun to sprout from the intellectual property

arena. For an excellent analysis of the intersection of RICO and intellectual property, see Hale, *Civil RICO and Intellectual Property After Sedema,* 56 Miss. L.J. 567 (1986). 65 *Notre Dame L. Rev.* 1152 (1990).

The District Court seriously erred,

> Although the record reflects different views on why the business was not financially successful, it is clear that plaintiff ran into financial difficulties. In 1988 plaintiff, under threat of foreclosure, closed the business and *dationed* the property back to the seller, App. 192.

The facts belie this quote from the District Court. There was never a *dation;* Petitioner had numerous businesses; and foreclosure did not begin until 1989. Petitioner was in the business of Intellectual Property designing product lines, had just signed two New York contracts, App. 331-46 and a design contract.

Did the District Court (Fifth Circuit Court of Appeals) err when it, in conflict with other court of appeals, refused to admit proof that a defendant's misrepresentations which furthered the scheme and other schemes were involved in a conspiracy to defraud?

Petitioner in her Memorandum in Opposition to Motion for Judgment on the Pleadings, was even more specific in specifying her RICO causes of action and offered the District Court to take judicial notice of numerous fact documents, App. 61, and the District Court at the time rejecting the Motion for Judgment on the Pleadings stated Petitioner had a RICO cause of action, App. 62.

Did the District Court (Fifth Circuit Court of Appeals) err when it held, in conflict with other court of appeals, that an association in fact enterprise composed of two named defendants was not sufficiently distinct from other defendants?

There is another split of circuit court authorities on this point with the District Court (Fifth Circuit Court of Appeals) again in the minority,

> . . . the authority is split over whether a distinct "person" and the "enterprise" is required. Several circuits which have addressed the issue directly have, for example, expressly rejected such a requirement. *See Landry v. Air Line Pilots Ass'n. AFL-CIO*, 901 F.2d 404, 425 (5th Cir. 1990); . . . 16 *RICO Law Reporter*, No. 2, 311 (August 1992).

The District Court (Fifth Circuit Court of Appeals) erroneously relied upon " . . . the RICO violator and the RICO enterprise must be separate entities. Thus, a plaintiff must show that there is a separate *enterprise* and RICO person," App. 85-86. The better opinion is that,

> . . . once persons outside of the enterprise are included in the association in fact, much of the rationale underlying the employer/employee decision disappears . . . because outside agents, although working for the corporation, clearly have boundaries distinct and different from those of the corporation. Mathews, Weissman & Sturc, *Civil RICO*, §6.03[C] (Prentice Hall, 1991) (noting however, that it was unlikely that the associations of a corporation with agents performing work they were hired to do "would satisfy any but the most undemanding standards governing proof of enterprise.") 16 *RICO Law Reporter*, No. 2, 314 (August 1992).

Did the District Court (Fifth Circuit Court of Appeals) err when it, in conflict with other court of appeals, refused to admit proof that a defendant's misrepresentations which furthered the scheme and other schemes were involved in a conspiracy to defraud?

The answer to this error is obviously, yes. The District Court (Fifth Circuit Court of Appeals) relied upon *Marriott Bros. v. Gage*, 911 F.2d 1105 (5th Cir. 1990) and the opinion of the late Justice Alvin B. Rubin. *Marriott, Id.*, was decided upon,

> In short, Gage's failure to inform the Marriotts of the need for a real estate appraisal may have been a breach of state law in aid of his alleged RICO enterprise, but that does not transform it into a predicate act. *Marriott, Id.*, 1109.

Did the District Court (Fifth Circuit Court of Appeals) err in granting summary judgments when it held, in conflict with other court of appeals, the Respondents do not have to meet the burden of proof under Fed. R. Civ. P. 56?

The District Court improperly interpreted the law on summary judgments,

> Summary judgment must be granted when there is no genuine issue of material fact such that the moving party is entitled to judgment as a matter of law. F.R.P.C. 56(c). Rule 56(c) mandates summary judgment if a party fails to establish the existence of an element essential to its case and on which it has the burden of proof. (citation omitted), App. 236.

Respondent, Century 21 Real Estate Corporation, in its Motion for Summary Judgment attached the affidavit of its marketing and advertising manager who incidently couldn't qualify as Fed. R. Civ. P. 30(b)(6) representative

when his actual deposition was taken. His affidavit, App. 241-43, does not raise any issues that Petitioner would have had to file,

> The Advisory Committee Note to Rule 56 explains that "where the *evidentiary matter in support of the motion* [emphasis in original text] does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented." . . . It is firmly established that the party opposing the motion for summary judgment bears the burden of responding *only after* [emphasis in original text] the moving party has met its burden of coming forward with proof of the absence of any genuine issues of material fact. *Catrett v. Johns-Manville Sales Corp.*, 756 F.2d 184 (D.C. Cir. 1985), *rev'd sub nom., Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *remanded sub nom., Catrett v. Johns-Manville Sales Corp.*, 826 F.2d 33 (D.C. Cir. 1987).

Petitioner did in fact offer admissible evidence, her Affidavit and Statement of Material Facts, App. 105-34, a twenty-nine page document with fifty-six exhibits, charts, depositions and damages attached. This definitely would satisfy Chief Justice Rehnquist's concern expressed in *Celotex, supra*, 320, n. 1 and accompanying text regarding the nonmovant's burden and production of documents in opposing a motion for summary judgment. This offer of admissible evidence would also satisfy Justice White's test concerning materiality and the substantive law governing a claim:

> As to materiality, the substantive law (RICO) will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly

> preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. See generally 10A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure, §2725, pp. 93-95 (1983). This materiality determination rests of the substantive law, it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs. Any proof or evidentiary requirements imposed by substantive law are not germane to this inquiry, since materiality is only a criterion for categorizing factual disputes in their relation to the legal elements of the claim and not a criterion for evaluating the evidentiary underpinnings of those disputes. *Anderson v. Liberty Lobby,* 477 U.S. 242, 248 (1986).

The District Court didn't apply the *Anderson, Id.,* or *Celotex, supra,* or any other judicially known criteria to its application on the rules of summary judgment in the instant case.

Did the District Court (Fifth Circuit Court of Appeals) err, in conflict with other court of appeals, when it improperly applied the six step "Continuity Plus Relationship" test as set forth in *H. J. Inc. v. Northwestern Bell Tel. Co.,* 492 U.S. 229 (1989) in order to establish whether a "pattern" was present?

The District Court (Fifth Circuit Court of Appeals) did not seem to recognize the six step "Continuity Plus Relationship" test which Petitioner set forth in vivid detail in her Memorandums in Support of Reconsideration, App. 87-104 and App. 204-34, again including exhibits, charts, depositions and damages attached. The District Court, it is submitted, in all due respect, was fast approaching a early medical retirement and Petitioner

was caught in a *rush to judgment* [emphasis supplied] to clear up the docket of this division.

Did the District Court (Fifth Circuit Court of Appeals) err, in conflict with other court of appeals, indirectly overrule *R.A.G.S. Couture, Inc. v. Hyatt*, 774 F.2d 1350 (5th Cir. *en banc* 1985)?

This Circuit, individually and collectively, has been upset over *R.A.G.S., Id.*, since its inception and now relies upon *Calcasieu Marine Nat'l Bank v. Grant*, No. 90-4249 (5th Cir. October 17, 1991). Petitioner even complied with the *structural (approach) enterprise* [emphasis supplied] which reflects conflicts in the various circuits' opinions.

It is submitted the notion of *garden variety* [emphasis supplied] RICO disputes still apply,

> [Congress] provided no exception for businessmen, for white collar workers, for bankers or stockbrokers. If the conduct of such people can sometimes be fairly characterized as "garden variety fraud," we can only conclude that by the RICO statute Congress has provided an additional means to weed that "garden" of its fraud. It is almost too obvious to require statement, but fraud is fraud, whether it is committed by a hit man for organized crime or by the President of a Wall Street brokerage firm. *Furman v. Cirrito*, 741 F.2d 524 (2nd Cir. 1984), *cert. granted, judgment vacated sub nom. Joel v. Cirrito*, 473 U.S. 922 (1985), *appeal after remand*, 828 F.2d 898 (2nd Cir. 1987), *Id.* at 529.

Did the District Court (Fifth Circuit Court of Appeals) err, when it assumes factual questions to be true that are incorrectly stated in spite of being directly contradicted by affidavit, depositions, interrogatories and pleadings or is this a proper question for a jury?

The Respondents in previous filings have repeatedly referred to only the Amended RICO Case Statement in claiming lack of predicate acts by the aider and abettor Respondents. Petitioner had sufficient predicates of mail and wire of the primary Respondent, Century 21 Real Estate Corporation, however, the aider and abettor is also cast with these predicates as fact. The RICO Case Statement, App. 1-17, described all Respondents' predicate acts in connection with the advertising. The key words in the RICO Case Statement are *false advertising, overvaluation, schemes and listings* [emphasis supplied]. The weekly submitted MLS mailings are also predicates. In addition, the rejected documents attached to Petitioner's Affidavit, filed July 8, 1991, App. 105-34, detailed numerous mailings and predicates of all individual Respondents and indicated a mistake in the RICO Case Statement, the date should have been March 22, 1984. This typing error accounts for Petitioner's failure to recognize the closing documents and numerous mailings by Respondent, Waldon M. Hingle, between 1984, January through March 22nd, as indicated in the request for production by Mr. Hingle. The attachment documents further outlined all additional predicate acts through 1988. In Petitioner's Amended Affidavit, App. 135-90, the mistake and other overt and predicate acts are outlined from depositions, interrogatories and ,production of file. The mistake is caught on the affidavit and Item No. 2, wherein the statement itself, the acknowledgement and the March 22,

1984, date are not compatible and reflect two mailings in the sentence. Further, the independently mailed acknowledgement, in itself then noted closing documents and other mailings to be separate; the March 22, 1984, date (not April 22, 1984) showed an insurance document and letter, also the acknowledgement would have been ineffective after 15 days of closing February 29, 1984. It states in Respondent's, Margaret Pearson, handwriting a message, "They are having this signed today & will mail you a copy – Marge".

Respondent's, Century 21 Real Estate Corporation, Statement of the Case assumes as fact there was a *dation en paiement* (accord and satisfaction) executed between Petitioner and Respondent, Flannery. This record is devoid of any *dation en paiement* executed by any party in this record; however, it is a perfect smoke screen to avoid the real issues and presents confusion which consumed the District Court.

Petitioner produced nine (9) volumes of documents in her depositions supporting her claims. These documents were 1) to substantiate business losses; 2) real estate comparables of property in the general area; and 3) documents substantiating her RICO claims, App. 301-06.

Respondent's, Century 21 Real Estate Corporation, Statement of the Case flatly stated that " . . . Petitioner never established, or even explained . . . how they (Respondents) had conspired to inflate the price of real estate in St. Tammany Parish."

Respondent, Century 21 Real Estate Corporation, was always present at all hearings, motions and depositions and participated very actively in same where Petitioner

produced document after document, App. 292-300, to substantiate her case beginning with:

Appraisals & Comps. (Comparables)

This folder contains eighty exhibits of various appraisals, comparables, suits, sheriff's sale on properties in close proximity to the property that is the nexus of this matter.

Commercial Property Suits

This folder contains fifty-four exhibits of various suits and real estate transactions involving various Respondents.

Business Damages

This folder contains thirty-one exhibits of business damages.

RICO Violations

This folder contains thirty-two exhibits of how RICO was violated by Respondent, Century 21 Real Estate Corporation, and its various brokers.

Material Facts

This folder contains eight exhibits concerning the history of the Fremeaux Exit Ramp and how Respondents fraudulently misrepresented this alleged *enhancement* [emphasis supplied] to the property that is the subject matter of this suit.

Building Expenses Damages

This folder contains twenty-six exhibits, $34,247 concerning business expenses; $55,000 down payment; $101,037 of mortgage note payments made to Respondent, Flannery and four years of time in creation of a museum lost by Petitioner as a result of the fraudulent misrepresentations of some of Respondents.

Artistic/Literary/Intellectual Damages

This folder contains eight exhibits documenting Petitioner's Trademarks, Copyrights/Patents damages as a result of the fraudulent misrepresentations of some of Respondents.

Exhibits

This folder contains forty-three exhibits documenting various agreements to purchase, listing agreements, appraisals, mailings, mortgages, etc., reflecting some of the fraudulent misrepresentations of Respondents.

Litigation Damages & Expenses

This folder contains eight exhibits documenting Petitioner's expenses in connection with this suit.

This District Court erroneously denied the filing of this evidence of Petitioner's on the basis " . . . The material primarily concern plaintiff's claim for loss business opportunities." A summary inspection of these exhibits would have disclosed to the District Court (Fifth Circuit Court of Appeals) the actual contents. Petitioner subsequently twice *timely* [emphasis supplied] re-offered the evidence and the District Court ignored the timely re-offers.

Respondent, Century 21 Real Estate Corporation, presented a unique defense, isolation and/or lack of physical contact, as if this is some type of medical disease and makes much to do about not having contact with other Respondents or Petitioner. Respondent, Century 21 Real Estate Corporation, completely ignored the national advertising campaign it conduct that benefited Respondent and brought Petitioner into their offices. Respondent, Century 21 Real Estate Corporation, completely ignored the 6%-2% fees paid by other Respondents to itself and/or its National Advertising Fund from the sale of this property and other properties.

Respondent, Century 21 Real Estate Corporation, completely ignored Petitioner's First Amended and Supplemental Affidavit, App. 135-90, which set forth Respondent's, Century 21 Real Estate Corporation, involvement when Petitioner stated:

> . . . she is the victim of an overall scheme using the air-waves, wire and mail to disseminate false and misleading advertising. Viewing and receiving these commercials and advertisements caused her to rely on a structured and polished "Blue Suede Shoes" scheme which faded into an interlocking campaign scheme of "Bait and Switch" designed to create excessive profits in land sales transactions. The advertising campaigns aided each other in false representations, misleading advertising, both explicit and demonstrably false statements of material facts, and unfair and deceptive trade practices. Phase I involves Century 21 Real Estate Corporation in creating the "Blue Suede Shoes" campaign to introduce a polished and trusted C21 System, designed to train Brokers and Agents as trustworthy, friendly, real estate experts, and Neighborhood Professionals.
>
> Phase II, also participated in as a "principle", by Century 21 Real Estate Corporation, as Trustee for the N.A.F. The interlocking scheme of "Bait and Switch" involves knowing deceit, wrongful intent and conduct both indirectly and directly related to the other defendants' separate and distinct "Pattern of Racketeering Activity" and schemes to create excessive profits in land sales transactions; which generated funds for the RICO Enterprise. Once baited, commercials switch over to Phase II where ads are directed at buyers and sellers of real estate. The secondary campaign attempts to coverup misrepresentations and false statements with "Each Office is

Independently Owned"; however, a smoke screen exists as to whether this applies to the Franchisor/Owner Ads, Franchisee/Agent ads or the Buyer/Seller commercials themselves; or the 'separate and distinct pattern of racketeering activity' engaged in by the independently owned Brokers and their Agents. The common thread throughout each type of commercial is the C21 System of training and the expertise of agents who deal directly with the public. These are Genuine Issues of Material Facts,

a. Plaintiff did see each type of commercial over the years.

b. Plaintiff did rely on the expertise of two Brokers and two agents.

c. The C21 System does not "train" agents.

d. Plaintiff remembers the "impact" of the image of the C21 System and statements made.

e. 60 seconds for viewer recall would not ascertain whether it was produced and paid for by Century 21 Real Estate Corp., Century 21REC, as Trustee for the NAF, or National Advertising Fund for a Local Broker, or a Broker's commercial, however she recalls many commercials, App. 217-22.

f. 60 seconds for viewer recall would not include silent notations, of "Independently Owned", and she does not believe it is on the "Franchising" commercials, but she does recall the commercials.

g. 60 seconds for viewer recall would not indicate whether it was an International spot, Regional ad or Local commercial, but she remembers slogans, subjects, claims and visual-pictorials.

h. Advertisements claimed agents were your Neighborhood Professionals, you could trust your friendly neighborhood Specialists: Broker and Agents. Put you trust in Number 1, Century 21.

i. Commercials claimed agents were experts in real estate details and could help in all aspects of buying and selling property. The Neighborhood Specialist could better evaluate and sell your property. They were trained to help you in relocation with their nationwide network of expertise.

j. The commercial "Making Home Affordable" does not reflect accurately upon overvalued listings.

k. "Independently Owned and Operated" is not a legal license to make false statements of material facts in advertising and misrepresentations.

l. The Franchise may be independently owned; the C21 System, and the advertising is not or the funds derived from all of the aforementioned.

m. No where in the commercials or advertising does it state verbally or in writing that all claims are not true or may not be true.

In fact Century 21 Real Estate Corporation participated in Gallup Polls every year to the present date. The Corporation had knowledge of the impact on the public and intentionally geared its advertising to prey upon the public based on the information. The agent and public-consumer relationship in the advertisements is severed from the agent and customer relationship – reality App. 117-20; 136-39; 285-86.

This recital of Respondent's, Century 21 Real Estate Corporation, involvement by Petitioner is a thumb nail summary of the voluminous discovery directed to Petitioner's and the volumes of exhibits produced in response to this discovery and never contradicted by any Appellee; in fact, it details the actions of all Respondents. Petitioner refiled all of her previous pleadings by reference in her Motion to Reconsider App. 89,

> For the purposes of this Motion to Reconsider Plaintiff copies by reference all previous pleadings and documents filed by Plaintiff all as if copied herein in extenso.

This should have answered any objections by the District Court (Fifth Circuit Court of Appeals) about Petitioner not stating a RICO cause of action.

CONCLUSION

For the reasons set forth hereinabove, a Writ of Certiorari should issue to review the conflict in laws and the various circuits represented in the Opinion of the United States Court of Appeal for the Fifth Circuit and the various Orders and Judgments of the United States District Court for the Eastern District of Louisiana.

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5008 Folse Drive
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504-455-4440

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD,	*	CIVIL ACTION
Plaintiff	*	88-5540
VERSUS	*	NUMBER: SECTION J
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER - MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO.	*	SECTION:
	*	MAG. DIV.:
Defendants	*	

****

RICO CASE STATEMENT

1. The alleged unlawful conduct is in violation of 18 U.S.C. § 1962 (a) and (c), as well as 18 U.S.C. § 1341 and particularly § 1343.

2. *Defendants and basis of liability*:

   a. *Claire Olsen, wife of/and Guy T. Flannery*
   Sellers of over-valued property in question; used telephone lines and the U.S. Mails to list property for sale and then, more importantly, to establish meetings between the parties where they intentionally misrepresented property to have value far in excess of actual worth; placed time constraints upon complainant so that she was unable

to secure an appraisal; have continued to misrepresent property's worth to present time, and have instituted a scheme to produce a misleading appraisal recently. Also attempted to collect an unlawful debt by receiving principal and interest payments and then foreclosing on the mortgage associated with this over-valued property. Also guilty of negligent and/or intentional misrepresentation, breach of contract, breach of good faith performance, duress, and unfair and deceptive trade practices under Louisiana law.

b. *Marge Pearson*
Real estate agent employed by defendant Don Smart and Associates, Inc.; used telephone lines to discuss acquisition of property and to establish meetings between the parties; as complainant's fiduciary representative, negligently and/or intentionally misled complainant and misrepresented the property's true value, by both acts and omissions, to complainant; attempted to have complainant make even larger offer for property; intentionally concealed a scheme to inflate property values in St. Tammany Parish. Also guilty of breach of fiduciary obligation, negligent and/or intentional misrepresentation, breach of contract, breach of good faith performance, duress, and unfair and deceptive trade practices under Louisiana law.

c. *Don Smart and Associates, Inc.*
Affiliate and/or franchisee, and agent of Century 21. Allowed Century 21 to use federal air waves and the U.S. Mails to advertise this and other Century 21 branches. Said advertisements induced complainant to rely upon the representations and advice of defendants Don Smart and Associates, Inc., Century 21, and Marge Pearson,

and said advertisements further instructed and represented to complainant how to choose, evaluate and value a prospective property, upon which instructions and representations complainant relied.

Don Smart and Associates, Inc. also employed defendant Marge Pearson and upon information and belief knowingly participated in a scheme to inflate the value of St. Tammany Parish property.

Also guilty of breach of fiduciary obligation, negligent and/or intentional misrepresentation, breach of contract, breach of good faith performance, duress and unfair and deceptive trade practices under Louisiana law.

d. *Century 21 Real Estate Corporation*
Has established affiliates and/or franchisees throughout the country, including defendants Don Smart and Associates, Inc. and Century 21 Parker-May Associates, Inc.; used the federal airwaves and the U.S. Mails to advertise the services of this and other Century 21 branches. In the course of said advertisements, defendant Century 21 attempted to induce prospective home sellers and buyers, such as complainant, to rely upon the advice and counsel of its affiliates and the agent's employed thereby. Said advertising represents Century 21 agents as being trustworthy and professional, capable of competently representing a prospective real estate purchaser in obtaining the best possible price for a given property.

While acting as agent for Century 21, defendants Century 21 Parker-May Associates, Inc., Don Smart and Associates, Inc. and Marge Pearson used telephone lines to discuss complainant's acquisition of property and to establish meetings between the parties, and negligently and/or

intentionally misrepresented, through their acts and omissions, the property's true value and intentionally concealed scheme to inflate property values in St. Tammany Parish.

Also guilty of breach of fiduciary obligation, negligent and/or intentional misrepresentation, breach of contract, breach of good faith performance, duress and unfair and deceptive trade practices under Louisiana law.

e. *Century 21 Parker-May Associates, Inc.*
Affiliate and/or franchisee, and agent of Century 21. Allowed Century 21 to use federal airwaves and the U.S. Mails to advertise this and other Century 21 branches. Said advertisements induced complainant to rely upon the professional competence of defendant Century 21 Parker-May Associates, Inc., and led complainant to believe that defendant Century 21 Parker-May Associates, Inc. would not intentionally and substantially over-value properties listed for sale by Parker-May.

Intentionally and substantially over-valued the property which complainant acquired when said property was listed for sale by Parker-May; intentionally concealed the property's true worth and scheme to inflate property values in St. Tammany Parish.

Also guilty of breach of fiduciary obligation negligent and/or intentional misrepresentation, duress and unfair and deceptive trade practices under Louisiana law.

f. *Waldon M. Hingle*
Retained as attorney to represent complainant in the acquisition of property in question; intentionally and/or negligently misrepresented property's true value by both acts and omissions and concealed scheme to inflate property values in St. Tammany Parish. Also guilty of breach of fiduciary obligation, negligent and/or intentional misrepresentation, breach of contract, breach of good faith performance and unfair and deceptive trade practices under Louisiana law.

g. *ABC Insurance Co.*
Errors and omissions and general liability insurance carrier for defendant Century 21 Real Estate Corporation, liable directly to complainant under La. R.S. § 22:655, or alternatively liable *in solido* for any judgment rendered against Century 21.

h. *CDE Insurance Co.*
Error and omissions and/or general liability insurance carrier for Century 21 Parker-May Associates, Inc., liable directly to complainant under La. R.S. § 22:655, or alternatively liable *in solido* for any judgment rendered against Parker-May.

i. *XYZ Insurance Co.*
Errors and omissions and/or general liability insurance carrier for Marge Pearson and Don Smart and Associates, Inc., liable directly to complainant under La. R.S. § 22:655, or alternatively liable *in solido* for any judgment rendered against either or both.

3. Mr. James E. Hulsey and Leader Realty Corporation, believed possibly to have been involved in misrepresentations, subject to further discovery and investigation.

4. Sandra Seefeld, complainant, purchased property virtually unimproved for $275,000.00, placed thousands of dollars of improvements into property, established a business, and then later discovered property was worth hundreds of thousands of dollars less than price paid at time of acquisition. Value now, *with* substantial improvements made, approximately $65,000.00 to $100,000.00 *less* than purchase price of virtually *unimproved* property. Also incurred damage to her reputation in the community, destroyed her business, lost the cost of all business expenses incurred and improvements made to the property, and lost potential profits from her business, and finally suffered severe mental anguish.

5. (a) Predicate acts include use of federal airwaves (18 U.S.C. § 1343) and of the U.S. Mails (18 U.S.C. § 1962 (c) for purposes of Century 21 advertising, in order to induce complainant and others to rely upon the advice, counsel, and representations of Century 21, its agents and affiliates. After laying a foundation to establish trust on the part of the victim, the defendants participated in a scheme, through its agents and affiliates, using telephone lines (18 U.S.C. § 1341 and 1343) to intentionally and/or negligently misrepresent the value of the property in question and to induce complainant to purchase said property for an extremely inflated price, including the use of telephone lines to establish meetings whereby defendants made numerous misrepresentations and pressured plaintiff to purchase said over-valued property. Furthermore, complainant avers that defendants have attempted to collect an illegal debt by collecting commissions and mortgage payments, and by foreclosing on the mortgage associated with this property (18 U.S.C. § 1962 (a)).

(b) Complainant avers that Century 21 ran weekly and/or daily television commercials in both Texas and Louisiana during the weeks immediately preceding December 27, 1983, and including the week of December 27-30, 1983. In fact, said advertising continues to run, upon information and belief, to the present date.

Complainant further avers that in two telephone conversations occurring on or about December 27 and December 29, 1983, the acquisition of the property in question was discussed, misrepresentations were made, and further meetings were set up for December 28 and 29, 1983, respectively, during which more misrepresentations were made as to the value of the property and also during which defendants induced complainant to purchase same at an extremely inflated price.

(c) The exact time of Century 21's advertisements is not known at this time. The misrepresentations made by Century 21 as to the professional representation of its agents and affiliates appeared in publications which were mailed to various Century 21 branches and then disseminated, although the exact time of said mailing is not known. Complainant acquired Century 21 brochures at various times, including some on December 27, 1983, the exact time being unknown. The brochures were mailed, upon information and belief, to the offices of Don Smart and Associates, Inc., 1501 Gause Blvd., Slidell, Louisiana, which is where said brochures and advertisements were presented to complainant.

Misrepresentations were also made by Century 21 in its television advertising throughout the

metropolitan New Orleans area, including throughout St. Tammany Parish. The exact times of the television advertisements are unknown. These misrepresentations all dealt with the ability and trustworthiness of Century 21 agents and affiliates. The advertising also misled plaintiff into believing that she would benefit financially by her investment in real estate through the appreciation of the property, rather than lose hundreds of thousands of dollars when the property was discovered to have been over-valued.

Further, predicate offenses include the use of telephone lines on December 28 and December 29, 1983, for the purpose of discussing the prospective sale. Misrepresentations were made during the course of those telephone conversations, and further meetings were established wherein even more misrepresentations were made as to the property's value. These telephone calls were made from an unknown location to the place where complainant was temporarily residing at the time in St. Tammany Parish.

Finally, defendants have attempted to collect an illegal debt – one procured through fraud and intentional misrepresentations, by demanding payment for same including commissions and mortgage payments. Defendant Flannery demanded payment on several occasions including a telephone call placed on January 15, 1988 to Ms. Seefield at her home on the subject property; defendant Flannery also attempted to collect the illegal debt by attempting to foreclose on complainant's property, and by

attempting to have it disclaimed from complainant's bankruptcy proceedings pending at the time (but later dismissed).

(d) The alleged predicate acts do relate to the enterprises as part of a common plan which, upon information and belief, involved this and other similar schemes to inflate property values in the Slidell/St. Tammany Parish area in an attempt to increase the income of those involved by increasing commissions from sales and appraisals of said real estate and by increasing the profits to be derived from real estate dealings in St. Tammany Parish.

6. The enterprises involved in this litigation are as follows:

(a) (1) Don Smart and Associates, Inc.;

(2) Century 21 Real Estate Corporation;

(3) Century 21 Parker-May Associates, Inc.;

and, (4) an enterprise involving the above entities and the named individual defendants who conspired together to sell the property in question at a tremendously over-valued price, in order to benefit themselves individually and the enterprise as a whole by increasing their income from the sale and by inflating the value of appraised property in the area.

(b) (1) Don Smart and Associates, Inc. is upon information and belief a corporation having its principal place of business in the Parish of St. Tammany. Mr. Donald Smart is the president, upon information and belief of said enterprise. The enterprise consists of a real estate firm employing real estate

agents to list and show properties for sale, secure appraisals, negotiate terms and handle the details of closing real estate transactions. Upon information and belief, the enterprise earns income from commissions on real estate sales and from commissions on appraisals, as well as income from other real estate dealings.

(2) Century 21 Real Estate Corporation is upon information and belief a foreign corporation authorized to do and doing business in Louisiana, and particularly in the Parish of St. Tammany, through its franchisees, affiliates and/or agents located within Louisiana. Upon information and belief, Century 21 Real Estate Corporation has established a nationwide network of real estate agents and brokers designed to handle all matters involved in the purchase and/or sale of a home.

(3) Century 21 Parker-May Associates, Inc. is upon information and belief a Louisiana corporation having its principal place of business in the Parish of St. Tammany. The enterprise consists upon information and belief, of a real estate firm employing real estate agents to list and show properties for sale, secure appraisals, negotiate terms and handle the details of closing real estate transactions. Upon information and belief, the enterprise earns income from commissions on real estate sales and from commissions on appraisals, as well as income from other real estate dealings.

(4) The enterprise consisting of the previous three entities and the individual defendants consists of a structure involving real estate agents representing both the buyer, who in this case was unaware of the scheme, and the seller, appraisers, and attorneys closing the sales, as well as possibly the buyers and the sellers themselves. The purpose of the enterprise again was to inflate the values of real estate in St. Tammany Parish so as to increase the sales of the individual defendants and of the enterprise as a whole, since inflation of a few property values will produce higher comparables thereby inflating all or many property values in the area.

(c) Marge Pearson is, upon information and belief, an employee, contractor and/or agent of the enterprise Don Smart and Associates, Inc.

(d) Upon information and belief, defendants Don Smart and Associates, Inc. and Century 21 Parker-May Associates, Inc. are associated with Century 21 Real Estate Corporation. Other than that association and Marge Pearson's association with Don Smart and Associates, Inc. discussed above, the other defendants are not, to complainant's knowledge, formally "associated" or "employed" by the aforementioned enterprises. However, upon information and belief, all of the defendants are informally associated with each other. Upon information and belief, defendants Pearson and Flannery had a business relationship together in the past. An associate of Mr. Hingle is now employed with Claire Olsen Flannery. Furthermore, Mr. Hingle is on retainer to Don Smart and Associates, Inc.,

has defended Don Smart in the past on similar issues, and Mr. Hingle's present wife is in fact employed by Don Smart and Associates, Inc.

(e) In the case of Don Smart and Associates, Inc., Century 21 Real Estate Corporation, and Century 21 Parker-May Associates, Inc. the defendants are the enterprise itself, but the individual defendants are separate from the enterprise.

In the case of the fourth enterprise alleged, the enterprise is separate and distinct from the defendants, and has a structure of roles including appraisers, real estate agents, attorneys and sellers, which is separate and distinct from that of the corporate defendants. The individual defendants and the corporate defendants occupy roles or positions within the separate and distinct enterprise.

(f) Don Smart and Associates, Inc., Century 21 Real Estate Corporation and Century 21 Parker-May Associates, Inc. are all perpetrators of the alleged activities violative of the Civil RICO Statutes.

7. The pattern of activities described in this complaint which violates the Civil RICO Statutes is separate from the enterprises described herein. Particularly the three corporate enterprises, Don Smart and Associates, Inc., Century 21 Real Estate Corporation, and Century 21 Parker-May Associates, Inc. have corporate structures and conduct legal, valid business dealings and real estate transactions. The fourth enterprise alleged also carried on proper, legal, and valid real estate transactions as well as the illegal schemes which have formed the basis of this complaint.

8. The usual and daily activities of the four enterprises included routine real estate negotiations, the showing of listed properties, accepting the listing of properties for sale, securing appraisals and handling other pre-closing details. The illegal activity complained of in this complaint deals with a scheme to inflate property value(s) and to sell property at inflated prices, after inducing the buyer to trust those representing her, and then finally the scheme involves attempting to collect upon the debt created by the fraudulent sale.

9. The enterprises all receive benefits from the increased commission income created by the inflated property values, and perhaps from increased fees from inflated appraisals, which income increases exponentially as a few inflated property values create comparables for use in appraising other area properties, inflating those values as well. Also, upon information and belief, the enterprises may have benefitted from gains on sales of real estate and other real estate transactions and dealings with which each individual enterprise may have been involved.

10. Century 21 Real Estate Corporation's advertising, which induced complainant to rely upon and trust the advice, counsel and representations of defendants Don Smart and Associates, Inc., Marge Pearson, and Century 21 Parker-May Associates, Inc. was, upon information and belief, nationwide advertising affecting the sales of real estate between residents of various states. In this case, the nationwide advertising led to the sale of inflated Louisiana property to a Texas resident. Furthermore, the scheme to inflate property values will affect residents of other states wishing to purchase properties within Louisiana, and may include the use of the

United States Mails, telephone wires and federal airwaves to accomplish similar sales schemes. This property will become a comparable by which other properties are evaluated and appraised, and this sale could affect other sales including sales to non-Louisiana residents.

11. (a) Claire Olsen, wife of/and Guy T. Flannery, Don Smart and Associates, Inc., Century 21 Parker-May Associates, Inc. and Marge Pearson.

(b) Said income was derived from the collection of a debt fraudulently procured from complainant, including the collection of commission income and mortgage payments. The property has also been foreclosed upon. Upon information and belief, defendants have reinvested the income derived from the scheme, including interest income, into the aforementioned enterprise, which have also made purchases of products and items derived from the stream of interstate commerce with said proceeds.

12. N/A

13. (a) Marge Pearson is employed by Don Smart and Associates, Inc. Waldon M. Hingle is, upon information and belief, on retainer to Don Smart and Associates, Inc. Don Smart and Associates, Inc. and Century 21 Parker-May Associates, Inc. are both affiliated or associated with Century 21 Real Estate Corporation.

(b) No, the "person liable" and the "enterprise" are not necessarily the same entity, as Ms. Pearson and Mr. Hingle are both liable under the allegations of this complaint, but are not the enterprises cited herein.

14. N/A

15. The injuries of which Ms. Seefeld complains includes the difference between the property's true worth and the amount actually paid for the property, the payments made to the seller, Guy Flannery, on the mortgage obligation, the improvements and repairs which were made to the property and are now lost, as well as business expenses incurred to run complainant's museum/shoppe and showcase which are now lost. Complainant has also lost substantial profits from her business which was destroyed, her professional reputation in the community has been decimated, and she has suffered extreme mental anguish and emotional distress.

16. The scheme to inflate the subject property's value at complainant's expense directly resulted in complainant's losses in terms of the difference between the purchase price and actual value, the interest payments made and mental anguish. The business expenses and expenses for improvements which were lost, as well as the lost profits, damage to professional reputation, and the mental anguish all resulted from defendants attempts to collect on an unlawful debt, and the defendants' continuing attempts to misrepresent the property's true value.

17.

Losses due to difference between sales price and actual property value (all defendants liable)	$175,000.00
Principal and interest paid on obligation (all defendants liable)	$110,000.00
Lost opportunity costs and damages to business reputation (all defendants liable)	$1,000,000.00

Mental anguish (all defendants liable)	$500,000.00
Lost profits from business (all defendants liable)	$300,000.00

18. N/A

19. Breach of Fiduciary Obligation

Misrepresentation

Breach of Contract

Breach of Good Faith Performance of Contract

Duress

Unfair and Deceptive Trade Practices.

20. It is significant to note that similar complaints have been made in state court claims by St. Tammany Parish residents; please note the case of *Finn, et. al. v. Clover Construction Corporation*, proceedings no. 88,10556, pending before the 22nd Judicial District Court for the Parish of St. Tammany, State of Louisiana and *Vincent P. Giangrosso, Sr., et. al. v. Don Smart & Associates, Inc., et. al.*, proceedings no. 69,880 filed in the 22nd Judicial District Court for the Parish of St. Tammany, State of Louisiana, which further

indicate similar schemes and misrepresentations by defendants and others pertaining to the sales of real property in St. Tammany Parish.

RESPECTFULLY SUBMITTED:

/s/ Karen D. McCarthy
LANNY R. ZATZKIS
(Bar #13781)
KAREN D. McCARTHY
(Bar #14193)
LAWRENCE E. MACK
(Bar #17665)
LAW OFFICES OF LANNY R. ZATZKIS
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Attorneys for Sandra Seefeld

PLEASE SERVE:

Please hold service until further notice.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD	*	CIVIL ACTION
VERSUS	*	NO. 88-5540
CLAIRE, OLSEN, ET AL	*	SECTION:

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RICO STANDING ORDER

This case contains a Civil RICO claim, filed in this Court pursuant to 18 U.S.C. Sections 1961-1968. This Order has been designed to establish a uniform and efficient procedure for deciding RICO cases.

The plaintiff(s) shall file within 20 days of the entry of this order a RICO case statement (an original and one (1) copy). The statement shall include the facts plaintiffs rely upon to initiate this RICO complaint as a result of the "reasonable inquiry" required by Federal Rule of Civil Procedure II. In particular, the statement shall be in a form which uses the numbers and letters set forth below, unless filed as part of an amended and restated complaint (in which latter case, the allegations of the amended and restated complaint shall reasonably follow the organization set out below) and shall state in detail and with specificity the following information:

1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. Sections 1962(a), (b), (c), and/or (d). If you allege violations of more than one Section 1962 subsection, treat each as a separate RICO claim.

2. List *each* defendant and state the alleged misconduct and basis of liability of *each* defendant.

3. List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.

4. List the alleged victims and state how each victim allegedly was injured.

5. Describe in detail the pattern of racketeering activity or collection of an unlawful debt alleged for each RICO claim. A description of the pattern of racketeering activity shall include the following information:

(a) List the alleged predicate acts and the specific statutes allegedly violated;

(b) Provide the dates of the predicate acts, the participants in the predicate acts and a description of the facts surrounding each predicate act;

(c) If the RICO claim is based upon the predicate offenses of wire fraud, mail fraud, fraud in the sale of securities, or fraud in connection with a case under U.S.C. Title 11, the "circumstances constituting fraud or mistake shall be stated with particularity," Fed. R. Civ. P. 9(b). Identify the time, place and contents of the alleged misrepresentation or omissions, and the identity of persons to whom and by whom the alleged misrepresentations or omissions were made;

(d) Describe whether the alleged predicate acts relate to the enterprise as part of a common plan. If so, describe in detail.

6. Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

(a) State the names of the individuals, partnerships, corporations, associations or other entities allegedly constituting the enterprise;

(b) Describe the structure, purpose, roles, function and course of conduct of the enterprise.

(c) State whether any defendants are employees, officers or directors of the alleged enterprise;

(d) State whether any defendants are associated with the alleged enterprise, and if so, how;

(e) State whether you allege that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise;

(f) If you allege any defendants to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

7. State whether you allege and describe in detail how the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

8. Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs

from the usual and daily activities of the enterprise, if at all.

9. Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering activity.

10. Describe the effect of the activities of the enterprise on interstate or foreign commerce.

11. If the complaint alleges a violation of 18 U.S.C. Section 1962(a), provide the following information:

(a) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and,

(b) Describe the use or investment of such income.

12. If the complaint alleges a violation of 18 U.S.C. Section 1962(b), provide the following information:

(a) Describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise; and,

(b) State whether the same entity is both the liable "person" and the "enterprise" under Section 1962(b).

13. If the complaint alleges a violation of 18 U.S.C. Section 1962(c), provide the following information:

(a) State who is employed by or associated with the enterprise;

(b) State whether the same entity is both the liable "person" and the "enterprise" under Section 1962(c).

14. If the complaint alleges a violation of 18 U.S.C. Section 1962(d), describe in detail the alleged conspiracy.

15. Describe the alleged injury to business or property.

16. Describe the relationship between the alleged injury and violation of the RICO statute.

17. List the damages sustained by reason of the violation of Section 1962, indicating the amount for which each defendant allegedly is liable.

18. List all other federal causes of action, if any, and provide the relevant statute numbers.

19. List all pendant state claims, if any.

20. Provide any additional information you feel would be helpful to the Court in processing your RICO claim.

This order was adopted by the court en bank at its meeting of June 3, 1987. The court has further directed that it be entered in each RICO case at the time of filing.

/s/ Loretta G. Whyte
LORETTA G. WHYTE,
CLERK

DATE ISSUED February 6, 1989

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD,	*	CIVIL ACTION
Plaintiff	*	NO. 88-5540
VERSUS	*	SECTION J
CLAIRE OLSEN, wife of/and GUY. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO.	*	MAG. DIV.: 4
Defendants	*	

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MEMORANDUM IN OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS

MAY IT PLEASE THE COURT:

INTRODUCTION

This memorandum is submitted on behalf of plaintiff Sandra Seefeld (hereinafter "Seefeld") in response to the Motion for Judgment on the Pleadings filed by defendants Claire Olsen, wife of/and Guy T. Flannery (hereinafter, the "Flannerys"). This Motion solely seeks relief based upon the pleadings in this matter and solely relies upon the pleadings filed in this matter for support of its conclusions. Respondent Seefeld submits that due to this

fact and due to the required standard of review applicable in similar circumstances, Movers' Motion for Judgment on the Pleadings must be denied.

A motion pursuant to Rule 12(c) Fed. R. Civ. Proc., as was filed by the Flannerys, is designed to provide a means of disposing of cases when the material facts are not in dispute and a judgment on the merits can be achieved by focusing on the content of the pleadings and any facts of which the court will take judicial notice. Wright & Miller, Federal Practice and Procedure: Civil § 1367. The motion for a judgment on the pleadings only has utility when all material allegations of fact are admitted in the pleadings and only questions of law remain. *Id.* Further, if the pleadings do not resolve all of the factual issues in the case, a trial on the merits would be more appropriate than a resolution of the case on a rule 12(c) motion. *Id.*

STANDARD OF REVIEW

Hasty or imprudent use of a 12(c) motion by the courts violates the policy in favor of ensuring to each litigant a full and fair hearing on the merits of his claim on defense. Wright & Miller, *supra*, § 1368. Therefore, a motion for judgment on the pleadings should be granted only when a movant clearly establishes that no material issue of fact remains to be resolved and that movant is entitled to judgment as a matter of law. *Greenberg v. General Mills Fun Group, Inc.*, 478 F.2d 254, 256 (5th Cir. 1973). Miller & Wright, *supra*, § 1368.

In considering a motion for judgment on the pleadings, the trial court is required to view the facts presented

in the pleadings and the inferences to be drawn therefrom in the light most favorable to the non-moving party. Wright & Miller, *supra*, § 1368 at 690. In deciding upon a motion for a judgment on the pleadings, all allegations of fact contained in the non-mover's pleadings are accepted as true and all contravening assertions contained in the movant's pleadings are accepted as false. *Cash v. Commissioner of Internal Revenue*, 580 F.2d 152, 154 (5th Cir. 1978); *Wright & Miller, supra*, § 1368 at 691. See also *National Metropolitan Bank v. U.S.*, 65 S.Ct. 354, 323 U.S. 454, 89 L.Ed. 383 (1945). "In addition to assuming the truthfulness of the factual allegations for purposes of the motion, all reasonable inferences and intendments from these facts are drawn in favor of the non-moving party." Wright & Miller, *supra*, § 1368 at 693. A motion for judgment on the pleadings cannot be granted if any material issue cannot be resolved on the pleadings. *Id.*; see also *Planters Trust & Savings Bank v. Laugley*, 615 F.Supp. 751 W.D. La. 1985). "An issue of fact is deemed to be material if the outcome of the case might be altered by its resolution one way rather than the other." Wright & Miller, *supra*, at 684. Defendant will not succeed on a motion under Rule 12(c) if there are allegations in plaintiff's pleadings that, if proved, would permit recovery. *Id.* at 695. "A material issue of fact that will prevent a motion under Rule 12(c) from being successful may be framed by an express conflict on a particular point between the parties respective pleadings." *Id.* See also *SeaLand Services, Inc. v. D.I.C., Inc.*, 102 F.R.D. 252 (W.D. Tex. 1984). Therefore, after accepting all of plaintiff's allegations of fact in all her pleadings as true, and after accepting all of Movers' assertions as false, if *any* genuine issue as to *any* material

fact remains, if there is an express conflict on a particular point between the parties, and/or if plaintiff might recover based upon the alleged facts, then Movers' Motion for Judgment on the Pleadings must be denied.

STATEMENT OF THE CASE

On December 16, 1988 Seefeld filed a Complaint in this Court against the Flannerys and other defendants alleging Civil RICO violations and pendant state causes of action for breach of fiduciary obligation, misrepresentation, breach of contract, duress and unfair and deceptive trade practices. Pursuant to the RICO Standing Order of this Court, on December 16, 1988 Seefeld also filed a RICO Case Statement further outlining the claims against all defendants, including the Flannerys. This RICO Case statement includes within it a description of the predicate "pattern" acts alleged against the Flannerys and various descriptions of possible "enterprises". The Flannerys have answered this Complaint and counter-claimed. However, defendants Parker-May & Associates and Don Smart & Associates, Inc. have not yet filed answers. Seefeld's answer to the Flannerys' counterclaim was filed on June 15, 1989. The Flannerys filed their Motion for Judgment on Pleadings on or about February 14, 1990. Due to service of process problems and requests for extension of time to respond to the Complaint, attempts at discovery in this matter have only recently begun. However, some defendants have objected to proceeding with discovery, and a Motion to Quash has been granted by Magistrate Fonseca due to the lack of court-imposed discovery deadlines.

SUMMARY OF THE FACTS

The fact cited herein shall be taken solely from plaintiff Seefeld's pleadings as these facts are to be accepted as true for all purposes of this Motion; none of the alleged facts or opposing statements made by the movers, the Flannerys, contrary to those as alleged by Seefeld, are to be accepted as true, and therefore, these are not to be considered. The facts outlined herein shall be extracted from Seefeld's Complaint and RICO Case Statement. Seefeld shall particularly focus on the facts as alleged against the movers, the Flannerys. Plaintiff Seefeld avers that all of these facts are currently contested and material as to the claims brought by Seefeld.

The Flannerys are residents of an domiciled in St. Tammany Parish.[1] Defendant Marge Pearson (hereinafter "Pearson") is a resident of St. Tammany Parish and was employed by defendant Don Smart & Associates, Inc. as a real estate agent.[2] Defendants Don Smart & Associates, Inc. (hereinafter "Don Smart") and Century 21 Parker-May Associates, Inc. (hereinafter "Parker-May") are, upon information and belief real estate brokerage agencies and Louisiana corporations which have or had their principal places of business in St. Tammany Parish.[3] Defendant Century 21 Real Estate Corporation (hereinafter "Century 21") is a real estate corporation authorized to do and doing business in Louisiana.[4] In December,

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[1] See Complaint, paragraph II.

[2] *Id;* See also paragraph XIV.

[3] See Complaint, paragraph III.

[4] *Id.*

1983, plaintiff Seefeld relocated from Texas to St. Tammany Parish, Louisiana.[5] Upon her relocation, Seefeld contemplated a purchase of commercial property to use as her residence and as a museum/store.[6] Complainant was unfamiliar with the real estate market and the structure or level of property values in St. Tammany Parish.[7] Because of this unfamiliarity, Seefeld sought the expertise of a professional, nationally known real estate agency to assist and represent her in her contemplated purchase.[8] Complainant viewed numerous and repeated television and periodical advertisements of defendant Century 21 both prior to and after her relocation.[9] The television adds were run via federal airwaves and the periodical advertisements were delivered to Seefeld via the U.S. mails.[10] These television and periodical advertisements, together with the representations of the defendants herein, induced Seefeld to hire Century 21, Don Smart, and Pearson as her agents in her search for suitable commercial property.[11] Seefeld hired Century 21, Don Smart, and Pearson to represent her interests and to advise her as to the best course to take in these dealings.[12] Seefeld also hired these defendants to utilize

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[5] See Complaint, paragraph VII.

[6] See Complaint, paragraph VIII.

[7] See Complaint, paragraph IX.

[8] *Id.*

[9] See Complaint, paragraph X.

[10] *Id.*

[11] See Complaint, paragraphs XI, XII, XIII, and XIV.

[12] See Complaint, paragraph XIII.

appropriate comparables to further assess the eventual purchase property's value.[13]

By numerous telephone calls and other conversations, Seefeld made it clear to Don Smart and Pearson, who were affiliates and agents of Century 21, that she was unfamiliar with the real estate market in St. Tammany Parish and that she was relying upon their expertise in evaluating, assessing, and negotiating, an appropriate purchase price.[14] Don Smart, Pearson and Century 21 agreed to perform these services.[15]

Ms. Seefeld's real estate agent, Pearson and defendant Guy T. Flannery, the seller of the property herein, had known each other for more than a decade, having become acquainted through prior business associations when Pearson was an advertising sales representative.[16] Don Smart, Pearson and Century 21 were not only familiar with Guy T. Flannery, but also with the property involved in this transaction.[17] In fact, Don Smart, then acting on behalf of Guy T. Flannery, had previously listed this property for sale in 1982. Pearson, Don Smart, Century 21, Parker-May and Guy T. Flannery schemed to inflate the price of the property involved herein.[18] This

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[13] *Id.*

[14] See Complaint, paragraphs XX and XVI.

[15] *Id.*

[16] See Complaint, paragraph XVII.

[17] *Id.*

[18] See Complaint, paragraph XIII.

scheme was part of an ongoing scheme to defraud the general public by inflating the prices and values of St. Tammany Parish real estate without basis therefore,[19] then utilizing sale/resale and churning schemes to artificially inflate the values of properties that were then used as comparables in other area sales. In general, the effect of such a scheme increased the long term commissions received by real estate agents and brokers, as well as Century 21, and also increased the profits on the sales received by sellers participating in the deals, including the Flannerys.

Seefeld eventually purchased a virtually unimproved piece of property from the Flannerys in December, 1983 for $275,000.00.[20] This property had been purchased by the Flannerys only eight (8) years prior for $22,500.00.[21] Defendants Flannerys, Pearson, Parker-May and Don Smart knew of this original purchase price; however, Seefeld was unaware of it.[22]

Prior to the purchase by Seefeld, defendants Claire and Guy Flannery listed the property for sale with Don Smart and then with Parker-May, among others, at an extremely inflated price.[23] All of the defendants knew

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[19] See Complaint, paragraph XVII, XXXI, and XXXIII through XLI.

[20] See Complaint, paragraph XXIX.

[21] See Complaint, paragraph XVIII.

[22] See Complaint, paragraph XIX.

[23] See Complaint, paragraph XX.

this price was excessive.[24] Sellers, the Flannerys, used the telephone lines and U.S. mails to arrange the listing of this property for sale to the general public.[25] The Flannerys further used telephone lines to establish meetings between these parties where the Flannerys intentionally misrepresented the property to have value far in excess of its actual worth.[26] Defendants Pearson, Don Smart and Parker-May, agents of Century 21, further used the telephone lines to establish meetings in this matter.[27] Flannery knew Seefeld was unaware with the local real estate market and that Seefeld was relying upon the advice and representation of defendants Pearson and Don Smart.[28]

In the telephone conversations with Seefeld, and at meetings between the parties, Guy T. Flannery made numerous false representations as to the value of the property.[29] Flannery's false representations included that he received offers of between $300,000 and $400,000 for the land and that an exit on the interstate system was planned in the near future.[30] Flannery made the false statement that the interstate exit was planned in the near future knowing all along said exit was two years behind schedule and very likely never to be built.[31]

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[24] *Id.*

[25] See RICO Case Statement, item 2(a).

[26] See Civil RICO Case Statement, item 2(a).

[27] See Complaint, paragraph XXI.

[28] See Complaint, paragraph XXII.

[29] See Complaint, paragraph XXIII.

[30] See Complaint, paragraph XXIII.

[31] *Id.*

Numerous facts as to how Pearson, Don Smart, and Century 21 breached their fiduciary duty to Seefeld solely to inflate the St. Tammany parish property values in general and the Flannerys' property in particular are cited by Seefeld.[32]

Based upon the representations and advice of her agents, Seefeld purchased the property for many times what it was actually worth.[33] Seefeld only recently discovered (on December 17, 1987) that her property was worth substantially less, at the time of purchase, than what she paid for it.[34] At this time, defendants Pearson, Don Smart and Century 21 again attempted to conceal the property's true value, all as part of the overall scheme to inflate the value of St. Tammany property.[35] Defendants Guy and Claire Flannery have further this scheme by recently producing a misleading appraisal in conjunction with the Flannerys' attempts to collect an illegal debt and foreclosure upon the property, in order to re-acquire same for as small a sum as possible.[36] Defendants Guy and Claire Flannery used the telephone wires on January 15, 1988 to demand payment of this illegal debt in furtherance of the scheme.[37] The Flannerys further submitted a misleading appraisal in an attempt to have their

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[32] See Complaint, paragraphs XXIV through XXXII; see also Rico Case Statement, item numbers 2(b), (c), (d), and (f).

[33] See Complaint, paragraph XXIX.

[34] See Complaint, paragraph XXXIII.

[35] See Complaint, paragraph XXXII and XXXVII.

[36] See Complaint, paragraphs XXVII and XXXIV, and the Civil Rico Statement, items 2(a) and 5(c).

[37] See Civil RICO Statement, item 5(c).

illegal debt disclaimed from Seefeld's bankruptcy proceedings in the U.S. Bankruptcy Court for the Eastern District of Louisiana.[38] Ultimately, the Flannerys reacquired the property at sheriffs' auction for approximately $133,000.00. Their proscribed actions have continued to the present date.[39] Since the Flannerys have reacquired the property, they have attempted to resell same to third parties for twice what they paid, again reiterating the same misrepresentations made to complainant. Defendants continue the scheme to the present date.[40] Various enterprises are outlined in detail at paragraph XLI of the Complaint and in items 6(a)(b)(c)(d)(e) and (f) of the Civil RICO Statement.

The Flannerys at all times have intentionally misrepresented the value of the subject property.[41] The Flannerys have, at all times, acted in bad faith.[42]

These actions of the various defendants resulted in Seefeld filing suit. Seefeld states causes of action for violations of the Civil RICO Statute, for breach of fiduciary obligation, for misrepresentation, for breach of contract and breach of obligation of good faith performance, for duress and for violations of the Louisiana Unfair

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[38] See Complaint, paragraph XXXVII and the Civil RICO Statement, item 5(c).

[39] See Complaint, paragraph XL.

[40] See Complaint, paragraphs XXXVI through XXXVIII.

[41] See Complaint, paragraph XLIII.

[42] See Complaint, paragraph XLIV.

Trade Practices Act.[43] All but breach of fiduciary obligation are brought against the Flannerys.

The Flannerys have filed an answer and counterclaim. Defendants Don Smart and Parker-May have yet to answer this lawsuit.

ARGUMENT

I. PREMATURITY OF MOTION

The defendants Don Smart and Parker-May have yet to file answers in these proceedings. Said defendants may have valid cross-claims against the Flannerys. As these various defendants have yet to file answers to the Complaint, the pleadings in this matter are not closed. "A motion for judgment on the pleadings may be made at any time after the pleadings are closed[.]" *Wright & Miller*, § 1367 at 686, 687; Fed. R.Civ. Proc. Rule 12(c). Pleadings include cross-claims and third party claims. *Id.*, at 687; see also Fed. R. Civ. Rule Proc. 7(a). As various cross-claims and/or third party claims may still be interposed by the parties who have yet answered, the pleadings in this litigation are not yet closed. The Flannerys' motion should therefore be dismissed as premature.

II. MANY GENUINE ISSUES AS TO MATERIAL FACT EXIST.

The Flannerys have filed a Motion for Judgment on Pleadings, and include in their Memorandum in Support

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[43] See Complaint, paragraphs XXXIII through XLVII.

of Motion for Judgment on the Pleadings a section entitled "Summary of Facts." The Flannerys themselves list numerous factual issues which are contested, all of which would influence the outcome of a judgment in this matter. Seefeld pleads that defendant Pearson, an employee and agent of defendants Don Smart and Century 21, was acquainted and had associations with the Flannerys. Seefeld pleads that Pearson, Don Smart, Century 21 and Flannery schemed and/or conspired to not only defraud Seefeld, but the St. Tammany community and/or others looking to purchase real estate in St. Tammany as a whole, in a price-inflation scheme. Obviously, it is inherent in these pleadings that the defendants used their acquaintances and associations in furtherance of these schemes. These assertions must be accepted as truth for purposes of this motion. As the Flannerys point out, defendant Pearson, in her answer, states she has had no contact with Mr. Flannery for ten years prior to the sale of the subject property. This establishes the first of many contested issues, the actual association of the parties. Seefeld avers that even if this ten year separation is true, although for the purposes of this motion it must be considered false, this ten year absence does not deny the alleged fact that the parties used their acquaintance in furtherance of the schemes involved herein. It only means that perhaps the defendants may not have schemed or conspired in the ten year period prior to the sale involved herein.

The second contested issue of material fact is stated by the Flannerys immediately after the first one. Seefeld has pled, and therefore the allegation must be accepted as true, that the numerous misrepresentations made by the

Flannerys, among other things, constitute bad faith dealing on their part. Seefeld has pled that the Flannerys in bad faith breached their contracts and agreements. Yet, in their "Summary of Facts", the Flannerys allege that they "acted in good faith and never made any misrepresentations regarding property or its value." Clearly this difference on a particular fact, the Flannerys' motive and intent, is a material issue that would influence the outcome of this litigation.

Thirdly, the Flannerys aver that Seefeld "states no specific allegations setting forth any fraudulent acts of the defendant Guy T. Flannery." However, a review of paragraphs XXIII and XXXVIII of the Complaint, and of item numbers 2(a) and 5(c) of the Civil RICO Statement will prove that Seefeld has alleged at least five "fraudulent" acts of Guy T. Flannery, including, but not limited to: false statements as to the value of and offers previously made for the subject property; false statements as to the intent of the State to put an interstate exit in the area; continued misrepresentations of the value of the property and duress imposed upon the plaintiff in the hopes of circumventing an appraisal, the production and submission of a misleading appraisal; attempts to collect an illegal debt and the submission of the misleading appraisal to a court of law. All of these acts, accepted as true, will influence a decision on all of the causes of action alleged in Seefeld's complaint.

Therefore, by the Flannerys' *own admission*, at least three genuine issues as to material fact exist in this litigation.

As stated in the Introduction hereinabove, a 12(c) motion, such as this brought by the Flannerys, is designed to provide a means of disposing of cases when the material facts are not in dispute.[44] A 12(c) Motion only has utility when questions of law remain. The pleadings in this matter, including the Flannerys' Motion for Judgment on Pleadings and Memorandum in Support thereof, on their face simply do not resolve all of the material factual issues involved herein. The Flannerys' Memorandum in Support, just in its "Summary of Facts" section alone, identifies at least three of these contested material issues. A trial on the merits is more appropriate. The Flannerys' Motion should therefore be dismissed accordingly.

III. PLEADING REQUIREMENTS OF RICO MET

The first issue apparently argued by the Flannerys is that they should be entitled to a judgment on the pleadings due to Seefeld's alleged failure to fully outline facts sufficient to state a claim under 18 U.S.C. 1961 et seq. The Flannerys allege that Seefeld did not "set out in her complaint any action on the part of movers which aided in any scheme of the other defendants", that Seefeld failed to properly allege a pattern of racketeering activity, that Seefeld failed to sufficiently allege an enterprise and that no allegation of mailing or "evidence" to support the Flannerys' use of the U.S. Postal Service was presented.[45]

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[44] See pages 1 and 2, *supra*.

[45] See pages 3, 5, and 6 of the Flannerys Memorandum in Support of Motions for Judgment on the Pleadings. Seefeld

(Continued on following page)

However, a clear reading of the Summary of Facts section contained hereinabove, as it cites numerous allegations contained in either the Complaint or Civil RICO Case Statement, both of which were filed contemporaneously by Seefeld, and a review of the current case law regarding Civil RICO pleading, dispels the Flannerys' allegations that Seefeld has not properly outlined a Civil RICO cause of action.

A) Actions of the Flannerys.

The Complaint and Civil RICO Case Statement clearly outline some of the Flannerys' actions which aided not only in the scheme to defraud Seefeld but also in the scheme to improperly inflate the values of St. Tammany Parish property as a whole. These alleged acts, which must be accepted as true, include but are not limited to the following:

1. Guy T. Flannery and Marge Pearson were acquainted through prior business associations.
2. Don Smart, Pearson and Century 21 were familiar with Guy T. Flannery and the property involved herein and in fact had listed same for sale previously.
3. Pearson, Don Smart, Century 21, Parker-May and Guy T. Flannery schemed to inflate the price of the property involved herein.

(Continued from previous page)

submits that no evidence need be presented for this motion; the well-pleaded facts of the non-mover are accepted as true. Further, discovery is currently ongoing and only in its initial stages.

4. This scheme was part of an ongoing scheme to defraud the general public.

5. The Flannerys listed the property for sale with both Don Smart and Parker-May at an extremely inflated price.

6. The Flannerys used the telephone lines and the U.S. Mails to list the property to the general public.

7. The Flannerys used the telephone lines to establish meetings between the parties involved herein.

8. The Flannerys intentionally misrepresented the property to have value far in excess of its actual worth at these meetings and during discussions between the parties.

9. Flannery knew Seefeld was unknowledgeable of the local real estate market and that Seefeld was relying on Pearson, Don Smart and Century 21.

10. Guy T. Flannery falsely stated that he received offers of between $300,000 and $400,000 for the property in question, during meetings and by telephone.

11. Guy T. Flannery falsely misrepresented at meetings and by telephone that an interstate exit was planned in the near future all the while knowing the construction of the exit was unlikely.

12 Years after the purchase, the Flannerys furthered the scheme by producing a misleading appraisal in conjunction with the Flannerys' attempts to collect an illegal debt.

13. The Flannerys used the telephone wires in 1988 to demand payment of the illegal debt, in furtherance of the scheme.

14. The Flannerys submitted the misleading appraisal in an attempt to have the illegal debt disclaimed from Seefeld's bankruptcy proceedings.

15. These proscribed actions are continuing to this day.

16. The Flannerys have at all times misrepresented the value of the subject property.

17. The Flannerys have at all times acted in bad faith.

Clearly, items 5-8 and 10-17 outline actions of the Flannerys that aided in the schemes of not just the other defendants but of the Flannerys as well.

True, the mere listing of property with a selling agent in and of itself may not constitute active participation in a Civil RICO conspiracy, as argued by the Flannerys; however, a fraudulent listing could constitute active participation when read together with the other eleven acts of the Flannerys outlined hereinabove and in the Complaint and Civil RICO Statement filed by Seefeld.

The Flannerys cite various other factual allegations in support of their argument. First, the Flannerys are confused as to the significance of the original $22,500 purchase price of the subject property. The original price was pled to show the drastic and over-exaggerated value of the property as listed by the Flannerys. Although there may have been a general increase in realty prices in the Slidell area between 1975 and 1984, this increase was not

uniform nor is it realistic to even allege that general property values in the area increased ten- to thirteen-fold. The actual appreciation in value of the property in this area over the time period in question is another genuine issue of a material fact that is in direct dispute, which also supports dismissal of this motion, pursuant to Argument I, *supra*.

The Flannerys next attempt to minimize the time constraints and duress which they placed upon Seefeld to virtually force her to sign the purchase agreement and explain same as "common practice". True, it may be common practice to place a time limit on offers such as this; however, under the facts alleged, time constraints of a mere three days and the manner in which the time pressures are made, under certain circumstances can be used to bully an unsuspecting purchaser into a bum deal. Seefeld moved to Louisiana in late December, 1983. She was admittedly unaware and unknowledgeable of the local real estate market. She hired as her agents the other defendants due to this lack of knowledge. Seefeld was unaware that these other defendants were participating in a scheme to falsely elevate St. Tammany Parish property values. The Flannerys were acquainted and had associations with the other defendants. The Flannerys had a piece of property to sell, and they wanted as much as they could get for this piece of property. The Flannerys affirmatively misrepresented the value of this property to an unknowledgeable Seefeld, acting in conjunction with the other defendants, some of whom were supposedly representing Ms. Seefeld. Mr. Flannery falsely stated that an interstate exit was planned near the property in "the very near future", knowing that Seefeld intended to use

the property as a museum/store. In an attempt to take advantage of Seefeld's local ignorance of the real estate market and to keep Seefeld ignorant until after the sale, the Flannerys placed absurdly short time constraints, a few days, upon the unknowledgeable Seefeld, whose agents were actually assisting the Flannerys as they could only gain, as could Flannery, by an inflated price. Under this scenario, exceedingly brief time constraints and other pressures are pertinent to the ongoing scheme to defraud plaintiff and the general public as well.

The Flannerys further attempt, in their Memorandum in Support, to justify Mr. Flannery's false statements regarding the value of the property, the offers purportedly received on the property and the interstate exit which still has not been built at the present time, more than six years after the sale. Once again, the Flannerys point out additional factual issues that are material to a determination on the merits and which are in dispute. Mr. Flannery argues that these representations made in the course of sale negotiations were innocent, but were they? A genuine issue exists as to the Flannerys' intent and motive in making various statements to Seefeld. These statements and their bad faith intent are all alleged in the Complaint and Civil RICO Statement.

Accepting all of Seefeld's well-pled facts as true, and accepting all contrary statements made by the Flannerys as false, Seefeld clearly has alleged numerous actions by the Flannerys which assisted the other defendants in all of their schemes to defraud.

B) "Pattern" requirements.

Movers herein, Guy and Claire Flannery, cite improper case law in arguing that Ms. Seefeld has not properly pled a pattern of racketeering activity for purposes of Civil RICO. The case of *Morgan v. Bank of Waukegan*, 804 F.2d 970 (7th Cir. 1987), cited by defendants, is not controlling or even pertinent, following the recent United States Supreme Court decision in *H.J. Inc. v. Northwestern Bell Tele. Co.*, 109 S.Ct. 2893 (1989). The Supreme Court, in *Northwestern Bell*, held that a plaintiff in a civil RICO action must only show "at least two racketeering predicates that are *related* and that constitute *or threaten the likelihood of continue criminal activity.*" *Id.* at 2898-905 (Emphasis supplied). Proof of neither relationship nor continuity requires a showing that the predicates were committed in the furtherance of multiple schemes. *Id.* at 2901-2902. Therefore *Morgan's* multiple factor pattern analysis has been rejected, although it significantly was never accepted in the Fifth Circuit. See Gray v. Cauble, 849 F.2d 946 (5th Cir. 1988).

Seefeld alleges numerous predicate acts committed by the Flannerys themselves which are related and which have led to and/or threaten continued criminal activity. Seefeld has pled both mail and wire and in connection with the listing of the Flannerys' property by both Don Smart and Parker-May at tremendously inflated prices. Seefeld has also pled wire fraud in the acts arranging negotiations and the other meetings that ultimately lead up to the misrepresentations made to Seefeld and the sale of the property in question. Seefeld has alleged that five years after the initial predicate acts, the Flannerys again were guilty of wire fraud in connection with their

attempts to collect an illegal debt. Seefeld has alleged that the Flannerys continue their illegal misrepresentations to the present date and in fact submitted a misleading appraisal in connection with Ms. Seefeld's bankruptcy proceedings. Seefeld has alleged that the Flannerys' predicate act, together with the actions of Pearson, Don Smart and Century 21, continue today as the Flannerys continue their attempts, via telephones and the U.S. Mails, to collect an illegal debt and to camouflage their prior acts. Seefeld has also alleged continuing predicate acts on the part of the other defendants, particularly Don Smart and Century 21.

All of the Flannerys' predicate acts are related, not only to themselves but to the predicate acts alleged against the other defendants. They are all related by a common purpose (i.e. the inflation of land values in the Slidell area) and by similar victims (i.e. prospective property purchasers). Further, the initial predicate acts by Flannery in 1983 have led to the additional related predicate acts committed by the Flannerys in 1988. Again, the Flannerys submitted a fraudulent appraisal to the court in the hopes of having the property disclaimed. They then later reacquired the property at a low value, only, upon information and belief, to begin their misrepresentations to unsuspecting buyers again. As it is alleged that the Flannerys are still attempting to collect on an illegal debt, all of the former acts threaten the likelihood of continued criminal activity. Seefeld has fulfilled the requirements of The Supreme Court in *Northwestern Bell*. Further, they have fulfilled the prior requirements of the Fifth Circuit.

c) Enterprise.

Seefeld has pled with particularity an "enterprise". In fact, Seefeld has pled the existence of four possible enterprises. The Local Rules of this Court require that a Civil RICO Statement be filed in conjunction with a Civil RICO Complaint. Both pleadings, the Complaint and the Civil RICO Statement, outline these various entities, their actions and their structure.[46] These pleadings outline entity structure, specific actions, and motive. Although some conclusory allegations may be made in the pleadings, the majority of allegations are of specific facts. Seefeld has clearly pled "enterprise" within the confines of *Old Time Enterprises, Inc. v. International Coffee Corp.*, 862 F.2d 1213 (5th Cir. 1989).

An enterprise includes "any . . . legal entity, and any union or group of individuals associated in fact although not a legal entity". 18 U.S.C. §1961(4). Seefeld has in fact alleged four enterprises in her complaint and/or Civil RICO Case Statement: the legal entities Don Smart and Associates, Inc., Century 21 Real Estate Corporation, and Century 21 Parker-May Associates, Inc. The "persons" envisioned by 18 U.S.C. §1961(3) as the parties guilty of criminal activity are distinct from these enterprises Marge Pearson and the other real estate agents were employed by the enterprises. Guy Flannery was associated with the enterprise.

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[46] See Civil Rico Statement in its entirety, particularly item numbers 5 and 6.

More importantly, however, a fourth, *primary* "enterprise" was pled.[47] That enterprise was the association in fact of several individuals, including Marge Pearson, Waldon Hingle and the Flannerys, and several, juridical entities, including Century 21 Real Estate Corporation, Don Smart and Associates, Inc., and Century 21 Parker-May Associates, Inc. The ongoing organization, this association-in-fact enterprise, continued for a lengthy period between these individuals and others. Numerous prospective real estate purchasers were referred by Marge Pearson and other Don Smart and Associates agents to Waldon Hingle, who was on retainer for Don Smart. Waldon Hingle continued in the role of purported legal advisor lending credibility to the enterprise. Marge Pearson and/or Don Smart and Associates continued in their roles, attracting new purchasers, and leading the unsuspecting victims to trust in them as purported real estate experts by using carefully chosen comparables geared to property value inflation, often using properties as comparables that had been subject to prior churning schemes such as those schemes pled in the complaint.[48] Upon information and belief, the hierarchy of the enterprise required Pearson and Hingle to report to Don Smart. The association-in-fact enterprise also included Century 21 Parker-May and Associates. Both Parker-May and Don Smart listed this and similar area properties for sale, trading listings between the two entities but realizing that the properties were listed at excessively overvalued prices. In a "good guy-bad buy" type scheme, one

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[47] Civil RICO Case Statement, 70.6(a)4.

[48] See Complaint, paragraph XXXV.

agency represented the seller, in this case Parker-May, and the other entity represented the buyer, in this case Don Smart. None of these "persons" disclosed to Seefeld that Don Smart had previously listed the property while representing the sellers; Guy and Claire Flannery, and that the representation of the Flannerys had been switched to another agency in an attempt to move the property. Seefeld thought that Pearson and Smart were representing her and acting in her best interests. While Pearson and Hingle "reported" to Don Smart, Don Smart and Parker-May reported to Century 21 Real Estate Corporation, their mutual franchisor, completing the enterprise's hierarchy. Also involved in the association-in-fact enterprise was a seller (in this case the Flannerys), a continuing role in the enterprise although the person or "personnel" filling that role in the hierarchy may have changed. However, the Flannerys were associated with the enterprise for a period of two years.

The organizational existence of this enterprise was ongoing and continued, spawning other real estate schemes and litigation concerning same. That other litigation including upon information and belief, a suit brought by the Federal Savings and Loan Insurance Corporation, whereby Don Smart individually was represented by Hingle, who had also participated, upon information and belief, in closing the loan on the property involved in the suit. In another real estate scheme, Don Smart and others acquired property in Log Cabin Subdivision for $875,556.00, cash. On the same date, Don Smart and others granted two mortgages on the property, before the same notary that had closed the cash sale, said mortgages totalling $920,000.00, $45,000.00 more than

they had just paid for the property. Less than two months later on October 25, 1983, about two months before the sale to Seefeld, Don Smart and others sold the very same property to a corporation they had created just days before they originally acquired the property for the sum of $1,284,151.00, again of over $400,000.00. Complainant Seefeld asks this court to take judicial notice of documents recorded in the public records of Parish of St. Tammany, State of Louisiana, which substantiate these churning transactions.

Complainant avers that the association-in-fact enterprise continued and in October, 1985, Don Smart and Associates schemed to sell property to two unsuspecting victims, Joy and Domingo Elguezabal, for an inflated price, affirmatively misrepresenting to the Elguezabals that serious defects in the property did not exist. As a result, another lawsuit ensued. As it is clear that the enterprise continued at least from 1982, when Flannery was represented by Don Smart, through 1983, 1984 and even into 1985, the attributes of continuity are clearly satisfied herein. *Shaffer v. Williams*, 794 F.2d 1030 (5th Cir. 1986). Beyond doubt, the pleadings filed herein, including the Complaint and Civil RICO Case Statement, establish the existence of an enterprise. It is significant that federal pleadings, and particularly the Complaint are notice pleadings only.

d) Predicate Acts

Seefeld has alleged at least four specific predicate acts committed by the Flannerys.[49] The Flannerys must not have read item 2(a) of the Civil RICO Statement wherein it is specifically alleged that the Flannerys used the mails in furtherance of the scheme. Further, the Complaint and Civil RICO Statement outline numerous uses of the telephone wires by the Flannerys in furtherance of this scheme.[50] No specific evidence of these acts has been submitted, as discovery is only in its initial stages; however, at a trial on the merits following full discovery sufficient evidence shall be provided.

It is clear that the pleadings herein establish the requisite "pattern" of racketeering activity required by 18 U.S.C. §1961(5) and the recent jurisprudence. It must be noted that the pertinent U.S. Supreme Court jurisprudence on point defining the requirements of pleading a "pattern" is so recent, and the prior circuit court jurisprudence was so conflicting and confused, that a clear elucidation of pleading requirements was not made until months *after* this Complaint was filed, and this original Complaint and Civil RICO Case Statement should be viewed liberally as a result. *See, H.J., In. v. Northwestern Bell Telephone Co.*, 109 S. Ct. 2893 (1989). In *H.J.*, the Supreme Court held that at least two predicate acts were necessary to establish a pattern, but also that

> 'the term 'pattern' itself requires the showing of a relationship between the predicates, *ibid.*, and

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[49] See subsection b hereinabove.

[50] See the acts listed in Subsection a) hereinabove.

> of 'the threat of continuing activity . . . ' It is this factor of *continuity plus relationship* which combines to produce a pattern.'
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> . . . .
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> As we noted in *Sedima*, . . . 'criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission . . . "

Id. at 2900-01 (Emphasis supplied). In this case, the use of airwaves to lure unsuspecting victims into trusting the defendant real estate agents and brokers, and later the use of telephone wires and the mails to establish meetings to close the fraudulent sale are clearly related predicates. All of the predicate acts had the same or similar purpose – to inflate the values of area properties, resulting in increased profits to sellers and increased commission and other income to area real estate agents, brokers, and even franchisors. All of the predicate acts had similar victims unknowledgeable buyers and had similar participants.

As to the requirement of continuity, this same predicate activity continued later, with Century 21 agents using telephone lines to set up other similar real estate schemes. It also continued as Guy Flannery used telephone lines to attempt to collect the unlawful debts. The Court in *H.J.* held:

> To establish a RICO pattern it must be shown that the predicates themselves amount to, or that they otherwise constitute a threat of, *continuing* racketeering activity
>
> . . .

> [I]t is implausible to suppose that Congress thought continuity might be shown *only* by proof of multiple schemes . . . what a plaintiff or prosecutor must prove is continuity of racketeering activity, or its threat, *simpliciter* . . .
>
> A RICO pattern may surely be established if the related predicates themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit . . .

H.J., supra, 109 S.Ct. at 2901-02 (Emphasis supplied). Seefeld avers that she has adequately alleged the threat of continued criminal activity, including the Flannerys' 1988 telephone calls attempting to collect the illegal debt and the submission of an appraisal to the bankruptcy court which valued the property at about $93,000.00. After the Flannerys reacquired the property, upon information and belief, they resumed their illegal and/or fraudulent efforts to sell it, via telephone wires, for more than two-and-one-half times that amount. Further, Seefeld has recently become aware of the continued activities of Don Smart in real estate schemes as late as 1985.

e) Conclusion

Seefeld, by her Complaint and the required Civil RICO Statement, has sufficiently pled a cause of action for Civil RICO. Particularly, Seefeld has fulfilled the requirements of the U.S. Supreme Court in pleading "pattern" and of the U.S. Fifth Circuit in pleading "enterprise". Seefeld has pled at least four specific, related predicate acts which threaten the likelihood of future

RICO activity. Further, as is clear from a factual standpoint, Seefeld and the Flannerys have conflicting opinions as to material facts of this case. All of these facts represent significant and genuine disputes between the parties hereto. Therefore, for these reasons, the Flannerys' Motion must be dismissed.

f) Leave to Amend

In the alternative, if this Court rules that the Complaint and Civil RICO Statement filed by Seefeld do not sufficiently outline enough facts to establish a properly pled Civil RICO cause of action for failure to properly allege "pattern" and/or "enterprise", then Seefeld prays for leave to amend said pleadings pursuant to Rule 15(a), Fed. R. Civ. Proc. Pursuant to this Rule, and due to the fact that responsive pleadings have been filed, Seefeld may amend only by leave of court (or by consent), and leave shall be freely given when justice so requires. Rule 15(a), Fed. R. Civ. Proc. The Fifth Circuit Court of Appeals has held that Rule 15a requires that district court to allow these amendments "freely . . . when justice so requires." See *eg. Auster Oil & Gas, Inc. v. Stream*, 764 F.2d 381, 391 (5th Cir. 1985). Plaintiff should have the opportunity to amend its complaint if the original pleading fails to state a claim upon which relief should be granted. *Sherman v. Bd. of Regents of the State of Florida*, 451 F.2d 572 (5th Cir. 1971).

Seefeld has at all times endeavored to properly pled this cause of action. The Complaint contains extensive factual pleading, more than what is ordinarily required

under the federal notice pleading requirements. However, in addition to the Compliant, Seefeld filed contemporaneously therewith a Civil RICO Statement which further outlines the particulars of the Civil RICO claim. The alleged deficiencies only attach technical pleading requirements, not the actual merits of Seefeld's claim. Seefeld reminds this Court that the decision of the U.S. Supreme Court defining the RICO pleading requirements was actually rendered after the original Complaint was filed.

Further, this case is not set for trial and no pleading or discovery deadlines have been set. Seefeld has diligently attempted to move these matters along; delays were caused mostly by service of process problems. Although, Seefeld has attempted to proceed with discovery even without answers from various defendants, a Motion to Quash was granted by Magistrate Fonseca to prevent discovery pending answers by the defendants principally because no discovery deadlines had been imposed by the Court. As a result, discovery is in its initial stages. Amendment would not require the addition of new claims, but, at most only would require the pleading of clearer facts of "pattern" and "enterprise". Seefeld has never amended her Complaint. Amendment would not prejudice the parties or cause undue delay in these proceedings as the case is not set for trial, no pleading or discovery deadlines have been set, discovery has only recently begun, and discovery will not be interrupted to any significant degree. These factors all cut in favor of holding that justice requires allowing amendment. *Auster Oil & Gas, Inc. v. Stream, supra,* at 391; see also *Daly v. Sprague,* 742 F.2d 896 (5th Cir. 1984). Further, Seefeld's

request for amendment is timely as the motion currently before this Court is the first actual objection that Seefeld has received regarding the sufficiency of the allegations contained in the Complaint and Civil RICO Statement.

In addition, numerous acts of the Flannerys occurring subsequent to the filing of the original Complaint can and need to be added to supplement the complaint. These acts would enhance and add to the allegations that the Flannerys acts continue to this day proving the likelihood of continued RICO activity. Pursuant to Fed. R. Civ. Proc. Rule 15(d) Seefeld should be allowed to supplement her pleadings with a pleading outlining these post-Complaint acts.

For those reasons, if the Complaint and Civil RICO Statement fail to sufficiently allege "pattern" and/or "enterprise" as alleged by the Flannerys, or if they are insufficient for any other reason, then Seefeld requests leave to file an Amended and Supplemental Complaint to correct these deficiencies, pursuant to Rules 15(a) and (d), Fed. R. Civ. Proc.

IV. STATE COURT CAUSES OF ACTION

The Flannerys next aruge that they are entitled to a judgment on the pleadings regarding the state law causes of action for misrepresentation, etc. The Flannerys claim they were in good faith; however, this Court is to regard this claim as untrue for the purposes of this Motion, and the Court must accept as true Seefeld's specific allegations of bad faith and bad faith conduct, on the part of the Flannerys. The Flannerys state that the current, independently appraised value of the subject property, "in the

depressed economy in which the State and the Parish of St. Tammany finds [sic] itself [sic] today" is $200,000.00. The Flannerys attempt to disparage Ms. Seefeld's claims of this property's low value. However, the Flannerys submitted to the Bankruptcy Court an appraisal of only $93,000.00 for this property. Upon information and belief, the Flannerys still presevere in their attempts to sell this property to an unsuspecting buyer for $250,000.00 utilizing many of the same misrepresentations made to Ms. Seefeld. And, what the Flannerys fail to point out to this Court, in what may be another misrepresentation by the Flannerys, is that the $200,000.00 value to which they allege includes costly improvements and modifications which Seefeld made after the 1983 sale to the worthless shell of a building that was located on the property at the time of 1983 sale.[51] Seefeld has taken a piece of property that had a formerly worthless structure upon it and turned that structure into a commercial business/residence of considerable value. The alleged appraisal which the Flannerys emphasize in fact values the property with all improvements made by Seefeld. Seefeld alleges that the actual current value of this piece of property, if it was in the virtually unimproved condition that it was in at the time of sale, would be less than $85,000.00 Again, genuine issues as to the intent and motive of the Flannerys and the value of the property both in 1983 and now exist and are presented by the pleadings.

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[51] See Complaint, paragraph XXVI wherein the parties agreed that the structure on the subject property was worthless.

The Flannerys next cite three cases claiming that all of the state law actions should be dismissed because Seefeld could have obtained an appraisal. However, all three cases cited by Movers are factually dissimilar. In *Moreland v. Smith*, 457 So.2d 748 (2d Cir. 1984), the Second Circuit was specifically not presented, as this Court specifically is, with specific allegations that the seller fraudulently or otherwise misrepresented the value of the asset in question. *Id.* at 750. Further, in *Moreland*, all transactions were at arms length. *Id.* However, in the case before this Court, it is specifically pled that Seefeld was unknowledgeable of the local real estate market, that she hired an allegedly competent agency to represent her interests, and that agency conspired with the sellers, the Flannerys, to defraud the purchaser, Seefeld. Defendants affirmatively induced Seefeld to forego an appraisal using time pressure techniques and asserting that an appraisal was unnecessary since the transaction was owner-financed. Clearly this transaction is not at arms length, between two parties of equal negotiating strength, due to these factors. Therefore, Seefeld's failure to obtain an appraisal is not a bar to the causes of action alleged and specifically pled in these proceedings.

Further, in *Nugent v. Stanley*, 336 So.2d 1058 (3d Cir. 1976), the seller made misrepresentations to purchaser regarding the business purchased and seller's credit reputation. *Id.* at 1062. Based upon those factors the court ordered rescission of the purchase contract. *Id.* at 1063. It is alleged in the instant case that various misrepresentations were made to induce Seefeld to purchase the subject property. If proved true at a trial on the merits, Seefeld may be entitled to damages, if not rescission. Further, the

Third Circuit states that "[i]t is settled that misrepresentations with respect to value are not such an artifice as will invalidate an agreement of sale if the purchaser is in such a situation that he might with ordinary attention have detected the falsehood." (emphasis added). *Id.* Seefeld submits that the scheme practiced against her by the cooperative effort of all defendants, particularly including those defendants she hired to represent her interests, placed her in a situation where she could have never detected the falsehood in a timely manner. Seefeld's more than ordinary attention led her to realize that she needed assistance in this matter, and so she hired an experienced real estate agent and nationally known company to act on her behalf. Seefeld was never placed on notice that a scheme was being practiced against her by her agents and the sellers. Therefore, *Nugent* and the cases cited therein, for the reasons cited by the Flannerys, is inapplicable to the instant case.

Similarly *Zadeck v. Arkansas Louisiana Gas Co.*, 338 So.2d 303 (2d Cir. 1976) is also inapplicable. Due to the circumstances of the case before this Court, particularly the duress imposed upon plaintiff by defendants and the active misrepresentations made, the "means of ascertaining the value of property were not equally available to both parties." See *Zadeck, supra,* at 307.

Finally, Flannerys state that Seefeld's cause of action under La. R.S. 51:1405 (Unfair and Deceptive Trade Practices) should be dismissed as "movers did not take part in any action or misaction . . . "[52] Movers' allegations are a defense best taken up at a trial on the merits. A genuine

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[52] See Movers' Memorandum in Support, page 7.

issue as to the Flannerys' participation exists herein. As previously discussed in prior arguments hereinabove, numerous actions of the Flannerys are outlined in the Complaint. As the allegations contained in the Complaint allege misrepresentation, conspiracy and possibly fraud, these acts clearly, if proved true at a trial on the merits, are immoral, unethical, etc. and well within the ambit of La. R.S. 51:1405.

Once again, Movers arguments at best support a finding that genuine issues as to material facts exist in this litigation. Movers merely cite defenses to the claims of Seefeld in support of their Motion. These defenses are best saved for a trial on the merits after full discovery has been completed. For this additional reason, the Motion filed by the Flannerys must be dismissed.

V. CONVERSION TO RULE 56 MOTION

Pursuant to Rule 12(c) Fed. R. Civ. Proc. this Court may, in its discretion, convert a 12(c) motion into a Rule 56 Fed. R. Civ. Proc. Motion.

Seefeld avers that this Court should not convert this Rule 12(c) motion into a Rule 56 motion. Movers' pleadings are clear and consistent in that they are seeking only a judgment on the pleadings. Movers have not presented matters outside the pleadings to the Court. Movers have not fulfilled the local rules requirements for the bringing of a Rule 56 motion.[53] Therefore, this Court, in its discretion, should treat Movers' motion solely as a Motion for

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[53] Rule 3.9, Rules of the United States District Court for the Eastern District of Louisiana.

Judgment on the Pleadings. However, if this Court, pursuant to Rule 12(c) Fed. R. Civ. Proc. converts this Motion to a Rule 56 Motion for Summary Judgment, Seefeld requests additional time and a reasonable opportunity pursuant to Rule 12(c) to present all pertinent material such as affidavits and a statement of contested material facts. Further, pursuant to Rule 56(f), Fed. R. Civ. Proc., Seefeld requests that she be allowed to complete discovery before the Rule 56 Motion is heard, as the issues involved in this matter are not simple issues, and further discovery is necessary to adequately prepare for this type of motion.

WHEREFORE, Sandra Seefeld prays that the Motion for Judgment on the Pleadings filed by Guy and Claire Flannery be dismissed at their cost.

RESPECTFULLY SUBMITTED:

/s/ Karen D. McCarthy
LANNY R. ZATZKIS, T.A.
(BAR #13781)
Karen D. McCarthy
(BAR #14193)
LAWRENCE E. MACK
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70130
Telephone: (504) 528-9500
Attorneys for Sandra Seefeld

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing document has been served upon all parties, through counsel of record, via U.S. Mails postage prepaid and properly addressed, this 13th day of March, 1990.

/s/ Karen D. McCarthy

MEMORANDUM IN OPPOSITION TO
JUDGMENT ON PLEADINGS

* * *

[p.27] and others sold the very same property to a corporation they had created just days before they originally acquired the property for the sum of $1,284,151.00, again of over $400,000.00. Complainant Seefeld asks this court to take judicial notice of documents recorded in the public records of Parish of St. Tammany, State of Louisiana, which substantiate these churning transactions.

Complainant avers that the association-in-fact enterprise continued and in October, 1985, Don Smart and Associates schemed to sell property to two unsuspecting victims, Joy and Domingo Elguezabal, for an inflated price, affirmatively misrepresenting to the Elguezabals that serious defects in the property did not exist. As a result, another lawsuit ensued. As it is clear that the enterprise continued at least from 1982, when Flannery was represented by Don Smart, through 1983, 1984 and even into 1985, the attributes of continuity are clearly satisfied herein. *Shaffer v. Williams*, 794 F.2d 1030 (5th Cir. 1986). Beyond doubt, the pleadings filed herein, including the Complaint and Civil RICO Case Statement, establish the existence of an enterprise. It is significant that federal pleadings, and particularly the Complaint are notice pleadings only.

d) Predicate Acts

Seefeld has alleged at least four specific predicate acts committed by the Flannerys.[49] The Flannerys must not have read item 2(a) of the Civil RICO Statement wherein it is specifically alleged

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[49] See Subsection b hereinabove.

MINUTE ENTRY
CARR, J.
MARCH 19, 1990
(Filed March 19, 1990)

SANDRA SEEFIELD	CIVIL ACTION
VERSUS	NO. 88-5540
CLAIRE OLSEN, ET AL.	SECTION "J"

This matter is before the Court on the motion of defendants, Claire Olsen, wife of/and Guy T. Flannery, for judgment on the pleadings. Determining in the exercise of its discretion that oral argument is unnecessary, the Court CANCELS the hearing on the motion presently scheduled for March 21, 1990. The Court finds that plaintiff has stated a cause of action against the defendants under the Racketeer Influenced and Corrupt Organizations Act (RICO). Accordingly, defendants are not entitled to and the Court hereby DENIES the motion for judgment on the pleadings.

/s/ PEC

MINUTE ENTRY
CARR, J.
SEPTEMBER 12, 1990
(filed Sept. 12, 1990)

SANDRA SEEFIELD	CIVIL ACTION
VERSUS	NO. 88-5540
CLAIRE OLSEN, WIFE OF/AND GUY T. FLANNERY, ET AL	SECTION "J"

The motion of defendant, Waldon M. Hingle, to compel is GRANTED and accordingly plaintiff is ORDERED to amend her response to the Standing Rico Order of this Court within fifteen days from the date hereof setting forth with specificity the dates and times of the mail and wire fraud acts, what the mailings consisted of and who caused such mailings to be made.

/s/ PEC

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD, Plaintiff	*	CIVIL ACTION
VERSUS	*	NO. 88-5540
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INS.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO. Defendants	*	SECTION "J" MAG. DIV. 4

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AMENDED RICO CASE STATEMENT

NOW INTO COURT, through undersigned counsel, comes plaintiff, Sandra Seefeld, who amends and supplements her RICO case statement to add paragraphs 5 (a)(i) through 5 (a)(xxxii), to read as follows:

5(a)(i) Specifically, on or about December 26, 1983, sometime in the evening, defendant Marge Pearson telephoned plaintiff to discuss their viewing the inside of the building located on the property. At this time, defendant Pearson misrepresented to plaintiff that the listing price of the property was well within the

range of the fair market value of the property. Defendant Pearson further misrepresented to plaintiff that she would attempt to get additional information on the property.

5(a)(ii) On or about December 27, 1983, at approximately 8:30 p.m., defendant Pearson telephoned plaintiff in an attempt to convince her that defendant Flannery would not consider an offer of less than $300,000.00 for the property, as, she once again misrepresented to plaintiff, it was worth considerably more.

5(a)(iii) On or about December 27, 1983, defendant Pearson telephoned defendant Benston to relate plaintiff's interest in the property.

5(a)(iv) On or about December 27, 1983, defendant Benston telephoned defendant Flannery to relate plaintiff's interest in the property.

5(a)(v) On or about December 28, 1983, at approximately 6:00 p.m., defendant Pearson telephoned plaintiff and again misrepresented to her that the listing price of the property was within the range of the fair market value of the property and that property values in the same area in general were on the rise.

5(a)(vi) On or about December 29, 1983, at approximately 9:00 p.m. defendant Pearson telephoned plaintiff and misrepresented to her that $275,000.00 was a good price for the property, that the price was consistent with other property values in the area, and further that defendant Flannery was a reputable person and could be trusted. Defendant Pearson encouraged plaintiff to buy the property for $275,000, a price much higher than the property was actually worth.

5(a)(vii) On or about December 30, 1983, at approximately 10:00 a.m., defendant Pearson telephoned plaintiff to see if she had contacted defendant Waldon Hingle, Esquire, whom defendant Pearson had recommended tc plaintiff, about representing her in the transfer of the property.

5(a)(viii) On or about December 30, 1983, at approximately 9:00 a.m., defendant Flannery telephoned plaintiff and pressured her for a decision on buying the property.

5(a)(ix) On or about January 1, 1984, in the morning or early afternoon, defendant Pearson telephoned plaintiff and spoke to her husband, John Smith, and requested a check in he amount of $5,000,00 for escrow fees, thereby attempting to collect an unlawful debt.

5(a)(x) On or about January 2, 1984, defendant Waldon Hingle, Esquire telephoned plaintiff and misrepresented to her his relationship with defendants Pearson and Century 21 Don Smart & Associates, Inc.

5(a)(xi) On or about January 10, 1984, defendant Hingle telephoned plaintiff and misrepresented that defendant Pearson could be trusted.

5(a)(xii) On or about February 27, 1984, defendant Hingle telephoned plaintiff asking for money, in an attempt to collect an unlawful debt.

5(a)(xiii) On or about April 22, 1984, defendant Hingle mailed to plaintiff paperwork connected with the sale of the property and a letter regarding his representation of plaintiff.

5(a)(xiv) On or about January 15, 1987, defendant Flannery telephoned plaintiff to pressure her

to pay the mortgage on the property, in an attempt to collect an unlawful debt from plaintiff.

5(a)(xv) On or about January 25, 1987, defendant Flannery telephoned plaintiff and threatened to file suit and foreclose on the property, all in an attempt to collect on an unlawful debt.

5(a)(xvi) On or about December 16, 1987, defendant Pearson telephoned plaintiff to tell her of a fair market analysis she had done on the property which showed its value to be $211,832.00, in an attempt to cover her prior acts of fraudulent misrepresentation to plaintiff of the property's value.

5(a)(xvii) On or about December 18, 1987, defendant Pearson participated in the withdrawal of funds from a Tidewater Stock Savings Account in order to use such funds to pay the mortgage on the property, thereby participating in the collection of an unlawful debt.

5 (a)(xviii) On or about December 20, 1987, defendant Flannery telephoned plaintiff to pressure her to pay the mortgage on the property, in an attempt to collect an unlawful debt from plaintiff.

5(a)(xix) On or about December 27, 1987, defendant Flannery telephoned plaintiff to pressure her to pay the mortgage on the property, in an attempt to collect an unlawful debt from plaintiff.

5(a)(xx) On or about December 28, 1987, defendant Flannery telephoned plaintiff to pressure her to pay the mortgage on the property, in an attempt to collect an unlawful debt from plaintiff.

5(a)(xxi) On or abut February 7, 1988, defendant Flannery telephoned plaintiff to set up a meeting with her, whereby they could discuss a schedule for plaintiff paying the mortgage.

5(a)(xxii) On or about February 19, 1988, defendant Flannery telephoned plaintiff to request payment on the mortgage.

5(a)(xxiii) On or about March 1, 1988, defendant Pearson mailed to plaintiff copies of newspaper advertisements of the property listed at the inflated price, in an attempt to convince plaintiff that the property could be sold for that price.

5(a)(xxiv) On or about March 2, 1988, defendant Flannery sent a letter to plaintiff threatening to foreclosure on the property if plaintiff did not pay the mortgage.

5(a)(xxv) On or about March 14, 1988, defendant Flannery telephoned plaintiff to discuss the March 2, 1988 letter he sent to her.

5(a)(xxvi) On or about March 19, 1988, defendant Flannery telephoned plaintiff on two separate occasions to pressure plaintiff to pay the mortgage.

5(a)(xxvii) On or about March 19, 1988, defendant Pearson telephoned plaintiff to discuss the newspaper advertisements which she had mailed to plaintiff on or about March 1, 1988 and in an attempt to convince plaintiff that she did not need to have an appraisal done of the property, all in an attempt to disguise her prior acts of fraudulent misrepresentation to plaintiff regarding the property's value.

5(a)(xxviii) On or about March 28, 1988, defendant Pearson mailed to plaintiff three pages of property listings in the same area to be used as comparables, in an attempt to disguise her

prior acts of fraudulent misrepresentation to plaintiff regarding the property's value.

5(a)(xxix) On or about April 14, 1988, defendant Hand telephoned plaintiff's counsel at the southern Legal Clinic and claimed to be defendant Guy T. Flannery's attorney. He stated to Carolyn, an employee at Southern Legal Clinic, that defendant Flannery would accept a *dation en paiement* of the property, even though plaintiff had offered to dation the property to defendant Flannery several times, all of which he refused.

5(a)(xxx) On or about June 2, 1988, defendant Hand telephoned the Southern Legal Clinic and spoke to Sandy. He told her to tell plaintiff stop her investigation of defendant Flannery, in an obvious attempt to intimidate plaintiff, as it is clear that he was afraid plaintiff would discover the fraud that had been perpetrated upon her by defendants.

5(a)(xxxi) On or about June 27, 1988, defendant Hand mailed a letter to counsel for plaintiff in an attempt to intimidate plaintiff not to exercise her legal rights.

5(a)(xxxii) Sometime after February 29, 1984, defendant Hingle transferred funds paid to him by

plaintiff to defendants Parker-May and Century 21 Don Smart & Associates for unlawful commission fees.

RESPECTFULLY SUBMITTED:

/s/ Rhonda M. Benedetto
LANNY R. ZATZKIS, T.A.
(Bar #13781)
KAREN D. MCCARTHY
(Bar #14193)
RHONDA M. BENEDETTO
(Bar #18787)
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700 Camp Street
New Orleans, Louisiana
70130
Telephone: (504) 528-9500
Attorneys for Sandra Seefeld

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing document has been served upon all parties, through counsel of record, via U.S. Mails postage prepaid and properly addressed, this 27th day of September, 1990.

/s/ Rhonda M. Benedetto
RHONDA M. BENEDETTO

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD, Plaintiff	*	CIVIL ACTION NO. 88-5540
VERSUS	*	SECTION "J"
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INS.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO. Defendants	*	MAG. DIV. 4

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VERIFICATION AFFIDAVIT

PARISH OF ORLEANS

STATE OF LOUISIANA

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified in and for the State and Parish aforesaid, personally came and appeared:

SANDRA SEEFELD

Who after first being duly sworn, did depose and say that she has read the foregoing Amended Rico Case Statement

and that the allegations contained therein are true and correct to the best of her knowledge, information and belief.

/s/ Sandra Seefeld
SANDRA SEEFELD

SWORN TO AND SUBSCRIBED

BEFORE ME, NOTARY, this 27th day

of September, 1990.

/s/ Rhonda M. Benedetto
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD, Plaintiff	*	CIVIL ACTION
	*	NO. 88-5540
versus	*	SECTION "J"
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO. Defendants	*	MAG.DIV. 4

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EXPARTE MOTION AND ORDER

NOW INTO COURT comes Plaintiff, Sandra Seefeld, and upon suggesting to the Court that the Memorandum in Opposition to Summary Judgment filed yesterday had inadvertently omitted the flow Chart exhibits and that she be granted an order to file same.

JAMES F. QUAID, Professional Law Corporation

Attorney for Plaintiff
LSBA No. 10915
P.O. Box 73295
Metairie, Louisiana 70033
504-455-4440

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD, Plaintiff	*	CIVIL ACTION NO. 88-5540
versus	*	SECTION "J"
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO. Defendants	*	MAG.DIV. 4

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ORDER

Considering the foregoing Exparte Motion:

LET the attached exhibits be filed.

New Orleans, Louisiana, this 3rd day of April, 1991.

/s/ Patrick E. Carr
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD, Plaintiff	*	CIVIL ACTION
versus	*	NO. 88-5540
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO. Defendants	*	SECTION "J" MAG.DIV. 4

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EXPARTE MOTION AND
ORDER TO SUBSTITUTE EXHIBIT

NOW INTO COURT comes Plaintiff, Sandra Seefeld, and upon suggesting to the Court that the Memorandum in Opposition to Summary Judgment previously filed herein had the Flow Chart exhibits attached; however these exhibits were not complete. The following pages should be retained, Cash Flow Chart, Association Link Diagram and Association Link Chart. All other pages

should be discarded and Exhibit A attached to this Motion should be inserted.

JAMES F. QUAID, Professional Law Corporation

Attorney for Plaintiff
LSBA No. 10915
P. O. Box 73295
Metairie, Louisiana 70033
504-455-4440

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD, Plaintiff	*	CIVIL ACTION
	*	
	*	NO. 88-5540
versus	*	
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO.	*	SECTION "J"
	*	
	*	MAG.DIV. 4
	*	
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	*	
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	*	
	*	
Defendants	*	

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ORDER

Considering the foregoing Exparte Motion:

LET the attached Exhibit A be filed.

New Orleans, Louisiana, this ___ day of April, 1991.

UNITED STATES DISTRICT JUDGE

1MINUTE ENTRY
CARR, J.
April 16, 1991

(Filed April 17, 1991)

SANDRA SEEFELD,

VERSUS

CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORP.; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE

CIVIL ACTION

NO. 88-5540

SECTION "J"

This matter is before the Court on defendant Waldon M. Hingle's motion for summary judgment. [Document 101].

The claims against Defendant Hingle do not meet the test for a RICO cause of action as set forth in *H.J. Inc. v. Northwestern Bell Telephone Co.*, 109 S. Ct. 2983 (1989). Furthermore, it appears from the record that there is no genuine issue of material fact that would support a state law claim against Hingle. *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505 (1986).

Accordingly, the Court **GRANTS** defendant Waldon M. Hingle's motion for summary judgment dismissing him from the above captioned action.

/s/ PEC

CLERK TO SERVE ALL COUNSEL

MINUTE ENTRY
June 10, 1991
CARR, J.

(Filed June 12, 1991)

SANDRA SEEFELD,

VERSUS

CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO.

CIVIL ACTION

NO. 88-5540

SECTION "J"

This matter is before the Court on the motion of defendant Marge Pearson for summary judgment. [Document NO. 112]

Determining in its discretion that oral argument is unnecessary, the Court now **CANCELS** the hearing previously scheduled for June 12, 1991.

When, as here, the RICO standing order requires the plaintiff to state the facts upon which they will rely and specify the predicate acts and RICO violations, reliance on the standing order by defendant is appropriate. *Marriott Bros. v. Gage,* 911 F.2d 1105 (5th Cir. 1990). The plaintiff's RICO order has failed to meet the standard set forth in *H.J. Inc. v. Northwestern Bell Telephone Company,* 109 S. Ct. 2893 (1989).

Additionally, plaintiff's responses under oath during her deposition of October 31, 1990, fail to allege a genuine issue of material fact as to defendant Pearson. *Anderson v. Liberty Lobby*, 106 S.Ct. 2505, 2510 (1986).

Accordingly, the Court **GRANTS** the motion of defendant Marge Pearson for summary judgment.

/s/ PEC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD, Plaintiff	*	CIVIL ACTION
versus	*	NO. 88-5540
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO. Defendants	*	SECTION "J" MAG.DIV. 4

****

EXPARTE MOTION AND ORDER
(Filed July 8, 1991)

NOW INTO COURT comes Plaintiff, Sandra Seefeld, and upon suggesting to the Court that the Supplemental Memorandum in Opposition to Summary Judgment, Don Smart, previously filed had inadvertently omitted the Affidavit of Plaintiff and Exhibits and that she be granted an order to file same.

JAMES F. QUAID, Professional Law Corporation

/s/ James F. Quaid
Attorney for Plaintiff
LSBA No. 10915
P. O. Box 73295
Metairie, Louisiana 70033
504-455-4440

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD, Plaintiff	*	CIVIL ACTION
versus	*	NO. 88-5540
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO. Defendants	*	SECTION "J" MAG.DIV. 4

****

ORDER

Considering the foregoing Exparte Motion:

LET the attached Affidavit and Exhibits be filed.

New Orleans, Louisiana, this ___ day of July, 1991.

UNITED STATES DISTRICT JUDGE

DENIED SEE MINUTE ENTRY OF 7/9/91

MINUTE ENTRY
CARR, J.
July 9, 1991

(Filed July 9, 1991)

SANDRA SEEFELD,

VERSUS

CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORP.; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE

CIVIL ACTION

NO. 88-5540

SECTION "J"

This matter is before the Court on the ex-parte motion of plaintiff to submit evidentiary material which plaintiff asserts is relevant to her opposition to summary judgment filed by defendant Don Smart.

A review of the documents presented to chambers reveals that the majority of the four packing boxes of material is not relevant to the motion in any conceivable way. The material primarily concerns plaintiff's claim for lost business opportunities; the defendant's motion for summary judgment concerns the plaintiff's failure to state a federal RICO claim.

Additionally, the Court notes that under Uniform Local Rule 2.07E the deadline for filing responsive memorandum and documentary evidence was July 3, 1991. Thus, the plainitff's submissions are untimely.

Accordingly, plaintiff's ex-parte motion to submit the four boxes of exhibits and documents attached to Document No. 119 is **DENIED** without prejudice to her right to submit those documents that are relevant and responsive to motions before the Court.

/s/ PEC

MINUTE ENTRY
CARR, J.
July 8, 1991

(Filed July 9, 1991)

SANDRA SEEFELD,

VERSUS

CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORP.; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE

CIVIL ACTION

NO. 88-5540

SECTION "J"

This matter is before the Court on defendant Don Smart for summary judgment of the claims against him. [Document #115].

In *Landry v. Air Line Pilots Ass'n Intern.*, 901 F.2d 404, 425 (5th Cir. 1990), the Fifth Circuit interpreted 18 U.S.C. § 1962 (c) as pointing to Congress's intent that the RICO violator and the RICO enterprise be separate entities. Thus, a plaintiff must show that there is a separate RICO "enterprise" and RICO person.

In other words, even if plaintiff is able to show that Smart schemed to raise property rates in order to make bigger commissions and profits, she has not shown that an "enterprise" existed of which Smart was an actor. An individual can not be both the RICO person and the RICO enterprise. *Landry*, 901 F.2d at 425; *Moore v. A.G. Edwards & Sons, Inc.*, 631 F.Supp. 138 (E.D. La. 1986). Plaintiff has

failed to allege an ongoing criminal enterprise between the defendants of which Smart was an actor in.

Accordingly, defendant Don Smart's motion for summary judgment is **GRANTED.** Oral argument of this motion, previously scheduled for July 10, 1991, is **CANCELED.**

/s/ PEC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD,	*	CIVIL ACTION
Plaintiff	*	NO. 88-5540
versus	*	SECTION "J"
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO.	*	MAG.DIV. 4
Defendants	*	

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MOTION TO RECONSIDER

On motion of Plaintiff in this matter and upon suggesting to the Court that the Orders of this Court dated April 17, 1991, granting Defendant's, Waldon M. Hingle's, Defendant's, Marge Pearson's, dated June 12, 1991, and Defendant's, Don Smart's, dated July 9, 1991, Motions for Summary Judgment are erroneous and not in accordance with law for the following reasons:

The Motion for Reconsideration is made in accordance with Fed. R. Civ. P. 60(b)(6).

2.

The Orders dated April 17, 1991, June 12, 1991, and July 9, 1991, are in conflict with the Order dated March 19, 1990, a copy of which is annexed hereto, made part hereof, all as more fully as if copied herein in extenso and marked Exhibit B for identification[1].

3.

The Orders dated April 17, 1991, June 12, 1991, and July 9, 1991, are in conflict with the law and jurisprudence of the United States Court of Appeals, Fifth Circuit and the United States Supreme Court.

4.

The Orders dated April 17, 1991, June 12, 1991, and July 9, 1991, are premature and/or Plaintiff should have been granted leave to amend her petition and/or RICO Case Statement upon the completion of discovery.

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[1] Continuity requires this exhibit marking since Exhibit A has been used in the Opposition to Motion for Summary Judgment.

5.

For the purposes of this Motion to Reconsider Plaintiff copies by reference all previous pleadings and documents filed by Plaintiff all as if copied herein in extenso.

JAMES F. QUAID, Professional
Law Corporation

Attorney for Plaintiff
LSBA No. 10915
P. O. Box 73295
Metairie, Louisiana 70033
504-455-4440

Certificate

I hereby certify that I have mailed a copy of the attached captioned pleading, postage prepaid or by hand delivery, to all counsel of record this 6th day of August, 1991.

JAMES F. QUAID

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD,	*	CIVIL ACTION
Plaintiff	*	NO. 88-5540
versus	*	SECTION "J"
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO.	*	MAG.DIV. 4
Defendants	*	

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MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER

MAY IT PLEASE THE COURT:

Plaintiff suggest to the Court that various alternatives were present that would have allowed the Court to come to alternative conclusions on Defendants', Hingle's Pearson's and Smart's, Motions for Summary Judgment.

The Court previously through its Minute Entry,

> The Court finds that plaintiff (Sandra Seefeld) has stated a cause of action against the ***defendants*** [emphasis supplied] under the Racketeer

Influenced and Corrupt Organization Act (RICO).[1]

There has not been any change in the facts of this case, the law or the jurisprudence since this Minute Entry.

Plaintiff suggest to the Court that the same results could have been obtained, if the Court felt some change in the facts, the law or the jurisprudence had occurred by withholding a decision on the Motion for Summary Judgment by all Defendants until discovery had been completed. What would this have accomplished? It would have given the Court a clearer insight and sufficient evidence regarding the continuity, the enterprise status and the individual defendants associated together to commit several other acts coming within the purview of RICO on other occasions.

The linchpin of this case is the deposition of Defendant, Century 21 Real Estate Corporation. Absent the proper production of documents in the possession of Defendant, C 21 REC, Plaintiff is unable to identify numerous documents used by this Defendant regarding the continuity, the enterprise status and the individual defendants associated together in this and other schemes.

Subsequent to the proper production of documents from Defendant, C 21 RE, Plaintiff would be able to produce to the Court ***sufficient evidence*** [emphasis supplied] linking the other Defendants together in this and other schemes and if Defendant, C 21 RE, would have provided a witness who was truly a F.R.Civ.P. 30(b)(6) party.

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[1] Document No. 49.

Defendant, Flannery, has still not provided the documents from his deposition dated February 26, 1990, in spite of agreement with his counsel to furnish,

> Well, on the record I would like to request as part of the return on the SDT his (Flannery's) acquisition documents, his transfer documents, if he did a liquidation I want copies of his liquidation documents and his personal tax returns because of all the stuff that he just talked about and if I'm required to issue a new subpoena, just let me know.[2]

Counsel for Flannery has also yet to provide the illegible name of the appraiser in the state foreclosure proceedings,

> I just want to put on the record that Mr. Hand has offered to go to the courthouse and find out who the appraiser was that was appointed for this foreclosure sale and that Miss Galloway handles executory proceedings.[3]

The depositions of all Defendants would be informative as to Defendants' prior and subsequent actions in the real estate business; however, the public record speaks for itself; for example, on February 25, 1983, Defendant, Hingle, was very busy. He passed an Act of Cash Sale from Clover Construction Corporation to Oasis Corporation who was represented by another Defendant, Donald R. Smart, in this case involving a piece of real estate in St. Tammany Parish for $326,700. Defendant, Hingle, it

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[2] Flannery Deposition p. 149, 11. 6-14.

[3] *Ibid.*, p. 93, 11. 5-10.

appears passed another Act of Cash Sale from Oasis Corporation still represented by Defendant, Smart, to The Village Apartments, a Louisiana partnership, on the same property but for an additional consideration of $450,000. Defendant, Hingle, was very busy on February 25, 1983, because he passed a Collateral Mortgage executed by the same Village Apartments, a Louisiana partnership, in favor of Founders Federal Savings and Loan Association in New Orleans for $4,000,000 on the same property that had been sold earlier the same date for $326,700 and latter on the same date for $450,000. This $4,000,000 Collateral Mortgage, it should be noted, was not for construction purposes since Defendant, Hingle, passed on this very same date a Agreement of Cross Pledge. Defendant, Hingle, was still very busy on February 25, 1983, because he passed a Mortgage executed by the same The Village Apartments, a Louisiana partnership, in favor of Bearer for $81,675 on the same property that had been twice acquired on the same date for $326,700 and $450,000. Defendant, Hingle, was still very busy on February 25, 1983, because he passed another Mortgage executed by the same Village Apartments, a Louisiana partnership, in favor of Bearer for $30,825.00 on the same property that had been twice acquired. A summary of these transactions has been previously supplied to the Court in Exhibit A, entitled Village Apartments, a Louisiana partnership, all as more fully as if copied herein in extenso. It appears this loan originally made in favor of Founders Federal Savings and Loan Association in New Orleans found its way into the loan portfolio of Alliance Federal Savings and Loan Association and was one of the

one hundred loans highlighted in the matter of *FSLIC vs. Guy W. Olano,* No. 86-0472 (ED.La).

June 1, 1984, was another very busy business day in the life of Defendant, Hingle. A summary of these transactions has been previously supplied to the Court in in Exhibit B, three pages, entitled East Expressway Shopping Center, all as more fully as if copied herein in extenso. He passed a Collateral Mortgage by Eastway Group, a Louisiana partnership, in favor of State Bank of Commerce for $500,000. He rapidly passed an Act of Second Mortgage in favor of Eugene Broyles on the same property for $181,000 Eastway Group had just acquired. What Defendant, Hingle, had in effect done at this point was to pass $680,000 in mortgages to cover a stated acquisition price of $600,000. Everything was quiet on the surface until the latter part of August, 1984, when the sales activity came to the infamous law offices of Guy W. Olano, Jr. Sometime in August, 1984, Olano's office passed a sale from Guevara to the Eastway Partnership of which Defendant, Smart, was a member, for $78,000 all cash. Defendant, Hingle, was still very busy aiding and abetting in this over valuation scheme by obtaining all of the tax research and other certificates for the Olano firm. The most interesting sale in this group was the sale from Rogers to R-II Properties, Inc., represented by a well known real estate entrepreneur, the one and only, Sam J. Recile. Rogers sold Lot 9 to R-II for $140,000 and Recile flipped on the same date in the next entry number Lot 9 to Eastway and Smart for $275,000, a quick cash profit of $135,000 to Recile or was it another way to buy ***over valuation*** [emphasis supplied]? Eastway and Smart mortgaged Lots 1-9 through Olano's office for $3,000,000,

Entry No. 556323, then remortgaged the entire property Lots 1-15 and 31-33 through Olano's office for $5,000,000, Entry No. 556324, without even an acknowledgment or recognition of the previous $3,000,000 mortgage, also neglecting to mention the fact Lot 7 was not acquired until Entry No. 557387 for $95,312. These transactions were placed through Federally insured institutions which ultimately had to foreclose and were ultimately sucked under through this vortex of over valuation and over mortgaging by Defendants, Hingle and Smart.

Defendant, Hingle, was well aware of the land flipping[4]/over valuation of the property sold to Plaintiff in this suit since he had represented Defendant, Smart, prior to his representation of Plaintiff and Defendant, Smart, had previously listed this property for Defendant, Flannery, for $350,000.

All Defendants in this matter were aware of the appraisal by Breeding and sale to Dr. Finn of property located much closer to Gause Boulevard in the same subdivision, Lindberg Glen, but being located on the

---

[4] Land Flip: In order to inflate a property's value well above its actual worth in order to justify the largest possible loan, swindlers would engage in a number of sham sales of the property, each time raising the sales price. No real cash ever changed hands during these sham sales. The only purpose of the sales was to record a new deed, each time reflecting a new, higher price. A property could be "sold" and resold several times in a single day. Once the desired value was reached the borrower would get a loan for that amount and later default on it, leaving the lender stuck with a grossly over incumbered property. Such sham sales were called "flips." S. Pizzo, *Inside Job* (1989).

paved road and having a substantial two story brick building and paved parking lot being given a land value to Dr. Finn's acquisition of $3.50 per square foot. Dr. Finn successfully sued his vendor for gross over valuation of this property. The sale of property to Plaintiff in which all Defendants were involved was for more than $5.00 per square foot in the same Lindberg Glen Subdivision but hundreds of feet down the unpaved road away from Guase Boulevard and Dr. Finn.

Plaintiff has specifically pled Defendants, Hingle, Pearson and Smart, as a coconspirator/aider and/or abettor who are ***principals*** [emphasis supplied] participant in the ***pattern of racketeering activity*** [emphasis supplied] comprised of overt acts in furtherance of various schemes as setforth in the various pleadings filed by Plaintiff which were crucial to the completion of said schemes.

As ***principals*** [emphasis supplied] Defendants, Hingle, Pearson and Smart, also committed predicate acts of misrepresentation of material facts and omissions considered predicate acts under RICO.

For the purposes of stating a clear case under RICO as setforth in *H.J. Inc. v. Northwestern Bell Telephone Co.*, 109 S.Ct. 2893, (1989) and the ***pattern requirements*** [emphasis supplied] of *Shaffer v. Williams*, 794 F.2d 1030 (5th Cir. 1986), under 18 U.S.C. § 1962(a), Plaintiff has pled an association-in-fact RICO enterprise comprised of Defendant, Century 21 Real Estate Corporation, engaged in a ***pattern of racketeering activity*** [emphasis supplied] affecting interstate commerce. The RICO enterprise and RICO Defendants are principal participants as co-conspirators/aiders and/or abettors engaging in overt

acts and predicate acts which intentionally aided the schemes of other RICO Defendant persons engaged in a ***pattern of racketeering activity*** [emphasis supplied] which is ***separate and distinct*** [emphasis supplied] from the association-in-fact entities.

It is important, for the purposes of RICO, that Defendant's, Hingle's, position in association with the RICO Enterprise and Defendant, C 21 RE, be made clear. The Affidavits of Rear Admiral J. W. Smith, USN (Ret) and his wife, Plaintiff, previously filed with the Court, make absolutely clear early contact with Defendant, Hingle, as an ***attorney*** [emphasis supplied] on December 28, 1983. The deposition of Defendant, Pearson, previously filed with the Court, for identification Exhibit C all as more fully as if copied herein in extenso, confirm Plaintiff's allegation that she contacted Defendant, Hingle, as an attorney[5] and Defendant, Pearson, thought of Defendant, Hingle, as an attorney in this case,

> Q. What did Mr. Hingle do at the office of Century 21 Don Smart?
>
> A. The talk (lecture) I think I can remember was strictly how to write a contract and some wording used in contracts, so that they were not questionable when they got to the ***attorney's office*** [emphasis supplied] so he knew what we meant when we wrote in certain things . . . [6]

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[5] Pearson Deposition p. 24-27.

[6] *Ibid.*, p. 27, 11. 6-13.

Defendant, Pearson, admitted she met Defendant, Hingle, in 1983 and that she referred Plaintiff to Defendant, Hingle.[7] Defendant, Pearson, never admitted that Defendant, Hingle, represented her personally as an attorney to obtain a quickie one day legal separation dated November 28, 1983, in the matter entitled "Margaret Pearson Jones vs. Louis James Jones" bearing docket No. 76985 of the 22nd Judicial District Court, previously filed with the Court, and marked for identification Exhibit D all as more fully as if copied herein in extenso, and prior to that in another lawsuit entitled "Margaret Elaine Pearson a/k/a Margaret Elaine Pearson Grabowski vs. Henry A. Fontain, et al" bearing docket No. 65957 of the 22nd Judicial District Court. Defendant, Pearson, in fact, denied no other contact or relationship with Defendant, Hingle,

> Q. . . . did you ever have any other contact or transactions with Mr. Hingle?
>
> A. No.
>
> Q. . . . did you ever receive any money from Mr. Hingle?
>
> A. No.
>
> Q. . . . did you ever give any money to Mr. Hingle?
>
> A. No.[8]

Defendant, Pearson, has never contradicted the facts set forth in Plaintiff's Amended RICO Case Statement, in which Plaintiff stated,

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[7] *Ibid.*, p. 24, 11. 1-15.

[8] *Ibid.*, p. 173, 11. 10-21.

> On or about December 30, 1983, at approximately 10:00 a.m. defendant Pearson telephoned plaintiff to see if she had contacted defendant Waldon Hingle, Esquire, who defendant Pearson had ***recommended*** [emphasis supplied] to plaintiff, about representing her in the transfer of the property.[9]

Defendant, Pearson, by this uncontradicted statement, admits to an overt act of aiding and abetting as a principal in the participation of the scheme, *U.S. v. Licursi*, 525 F.2nd 1164, 1167 (2nd Cir. 1975).

Defendants, Hingle and Smart, have been publicly linked since *Drews v. Giangrosso and Don Smart & Assoc.*, 429 So.2d 198 (La. App. 1st Cir. 1983), another real estate fraud case.

Defendant, Pearson, denies having any relationship with Defendant, Smart, prior to 1983,

> A. No, but I knew him (Smart), he was a developer in the area, so I have known him for years, I knew of him.
>
> Q. Did you ever meet him personally prior to 1983?
>
> A. Probably public functions, but not personally, no.[10]

This contradicts the fact that Defendant, Pearson, held Louisiana Real Estate Commission No. 1573, agent's

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[9] Amended RICO Case Statement, p. 3, 5(a)(vii).

[10] Pearson Deposition p. 30, 11. 9-15.

license, since 1977 under the name of Margaret Grabowski a/k/a Pearson with D. R. Smart, Inc., as broker. These three Defendants, Hingle, Smart and Pearson, had an ongoing and continuing unit relationship. Defendant, Person, made untrue statements throughout her deposition and omitted material facts in a continuing attempt to cover up the original acts, up to and including to date.

Defendant, Pearson, made the statement in her Motion for Summary Judgment citing from Plaintiff's deposition of October 31, 1990, only Plaintiff's sales for the years 1984, 1985 and 1986 completely ignoring the "Business Damages" documents #200-231 produced at the deposition as exhibits and is *prima facia* evidence of Plaintiff's damages, previously filed with the Court, all as more fully as if copied herein in extenso, the down payment of $55,000 and the initial business investment of $31,036+. Defendant, Pearson, was present at the deposition of October 31, 1990, yet ignores all of these documents and figures.

Defendant, Pearson, was also present on May 16, 1991, when Volume II of Plaintiff's deposition was completed. Defendant, Pearson, ignored the Non-Pecuniary Damages and Literary, Intellectual and Artistic Property Damages to Plaintiff's Trademarks, Copyrights, Tradenames, Patents, Contracts, Enchanted Minikins, Stickies, Toys From Outerspace and CaSSandra Collection that was sustained by Plaintiff[11], previously filed with the Court, all as more fully as if copied herein in extenso and marked Exhibit E.

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[11] Seefeld Deposition, p. 6-25.

Defendant, Pearson, ignored and did not deny the original Complaint specifying damages;

All of these activities have damaged complainant in the following respects:

Losses due to difference between sales price and actual property value	$ 175,000.00
Principal and Interest paid on obligation	110,000.00
Lost opportunity costs, lost business expenses, and damages to business representation	1,000,000.00
Mental anguish	500,000.00
Lost profits from business	300,000.00
TOTAL DAMAGES DUE COMPLAINANT[12]	$ 2,085,000.00

Defendant, Pearson, ignored and did not deny the RICO Case Statement again specifying damages;

> The injuries of which Ms. Seefeld complains includes the difference between the property's true worth and the amount actually paid for the property, the payments made to the seller, Guy Flannery, on the mortgage obligation, the improvements and repairs which were made to the property are now lost, as well as business expenses incurred to run complainant's museum/shoppe and showcase which are now lost. Complainant has also lost substantial profits from her business which were destroyed,

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[12] Complaint, ¶XLVIII.

> her professional reputation in the community has been decimated, and she has suffered extreme mental anguish and emotional distress.[13]

Defendant, Hingle, in covering up the original acts, has revealed his position within the ***Pattern of Racketeering Activity*** [emphasis supplied] as one who holds himself out as an attorney, expert in real estate, then fails to provide services. The false representation that the subject transaction of this suit is isolated and that Defendant, Hingle, was not Plaintiff's attorney is another cover up and a predicate act in itself. In light of previous documentation supplied, a genuine issue of material fact does exist concerning Plaintiff's allegations Defendant, Hingle, was acting as her attorney.

Defendants, Smart and Pearson, had a fiduciary duty to disclose to Plaintiff all information within their knowledge[14], i.e., the previous listings by Defendant, Flannery, the various true values of properties in the area of Lindberg Glen, Dr. Finn's property. Failure to do so is a breach of fiduciary duty, *Joseph v. Austin*, 420 So.2d 1181 (La. App. 5th Cir. 1982).

Defendants, Smart and Pearson, had a fiduciary duty to disclose to Plaintiff accurate information to Plaintiff concerning the true condition of the building on the

---

[13] RICO Case Statement ¶15.

[14] Both communication of half truttis and concealment of material facts are actionable under the mail fraud statute. *United States v. Beecroft*, 608 F.2d 753, 757 (9th Cir. 1979).

property that is the subject matter of this suit, *Guidry v. Barras,* 368 So.2d 1129 (La. App. 3rd Cir. 1979).

The Fifth Circuit has set forth standards for granting or denying summary judgments and if applied at this stage this Court will find Plaintiff has met the bench mark established by the Fifth Circuit,

> Our review of a grant of summary judgement is *de novo.* (Citing *Impossible Electronics Techniques, Inc. v. Wackenhut Protective Systems, Inc.,* 669 F.2d 1026, 1030 (5th Cir. Unit B 1982). The standards for granting or denying summary judgment are well known.
>
> The party seeking the summary judgment bears the exacting burden of demonstrating that there is no actual dispute as to any material fact in the case. . . . In assessing whether the movant has met this burden the court should view the evidence introduced and all factual inferences from that evidence in the light most favorable to the party opposing the motion. . . . All reasonable doubt about the facts should be resolved in favor of the non-moving litigant. . . . A court must not decide any factual issues it finds in the record, but if such are present, the court must deny the motion and proceed to trial. . . . If reasonable minds might differ on the inference arising from undisputed facts, then the court should deny summary judgment. *Landry v. Air Line Pilots Ass'n. Intern. AFL-CIO,* 901 F.2d 404, 424 (5th Cir. 1990).

The law supports Plaintiff's position that she has a RICO case and the Motion for Reconsideration against

Defendants, Hingle, Pearson and Smart, should be granted.

Respectfully submitted,

JAMES F. QUAID, Professional Law Corporation

Attorney for Plaintiff
LSBA No. 10915
P. O. Box 73295
Metairie, Louisiana 70033
504-455-4440

Certificate

I hereby certify that I have mailed a copy of the attached captioned pleading, postage prepaid or by hand delivery, to all counsel of record this 6th day of August, 1991.

JAMES F. QUAID

[Any typographical and/or incorrect punctuation found in the following Appendix document was left intentionally to show accurately how the original document appeared.]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD,	*	CIVIL ACTION
Plaintiff	*	NO. 88-5540
versus	*	SECTION "J"
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO.	*	MAG.DIV. 4
Defendants	*	

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PLAINTIFF'S AFFIDAVIT AND STATEMENT OF MATERIAL FACTS

BEFORE ME, the undersigned authority, personally came and appeared,

SANDRA SEEFELD

a person of the full age of majority who declared, under oath to me, Notary, that:

1.

She is the plaintiff in the above captioned matter. Although affiant is married, she and her present husband, ADMIRAL JOHN W. SMITH, U.S.N. RET. are separated in property.

2.

Prior to 1983, affiant was a resident of Galveston Island, Texas. She relocated her residence from the State of Texas, where it had been formerly located for a number of years, to the Parish of St. Tammany, State of Louisiana, where it remains to date. Affiant is self employed and operated her business out of her residence for all years pertinent herein. However, five months of 1983 were involved in cleanup, repairs and damages caused by Hurricane Alicia August 18, 1983. These are Genuine Issues of Material Fact, in as much as defendants' claim plaintiff has no business damages based on income reflected in income tax statements[1].

a. 1983 Business Investment $31,036.59;

b. Up to 1990 Business Investment $70,482.52[2];

c. Investigative & Litigation Expenses $20,964.51 (Not associated with Legal Fees & Expenses)[3];

---

[1] See Exhibit 1.

[2] See Exhibit Business Damages, Summary of Expenses/ Compilation.

[3] See Exhibit Litigation Damages & Expenses.

d. Down payment on Business Property $56,000.00;

e. Building & Construction Costs $34,247.00[4];

f. Mortgage Payments $101,037.00[5].

These figures do not include labor and time expended in research and development, procuring supplies and inventory, and affiant's part in building and decorating the museum/gallery; nor does it include labor and time in investigation and paralegal, and secretarial work in this litigation. Legal fees and costs, 1990 and 1991 are not included and are considerable.

3.

Affiant arrived in Slidell, Louisiana December 17th, and her belongings arrived December 21, 1983. She utilized the services of Security Van Lines of Kenner, Louisiana and established a superior "standard of care" in painstakingly protecting her art works, antiques, personal and business property at a cost of $4,520.52. This is a Genuine Issue of Material Fact[6].

a. Plaintiff's Business equipment, furniture, supplies, and intellectual property was damaged by forced relocation from the building.

---

[4] See Exhibit Building Expenses Damages.

[5] Id.

[6] See Exhibit Damages & Expenses Litigation.

4.

In 1982 Affiant voluntarily changed employment to pursue a life-long desire involving her creative aspirations. She intended that her work be developed in totality, without interruption and to set up a commercial enterprise pursuant to a wide range of products, both artistic and mechanical.

5.

Affiant's intentions were to create Trade Names, Trade Marks, and products to be protected by Federal Copyright and Patent Laws. Affiant designed a large body of work considered intellectual, artistic and literary property. Once her idea was fixed in a tangible medium of expression, the immediate effect of copyright law is:

a. To secure a fair return for the author's creative labor.

b. The ultimate aim, however, is to stimulate artistic creativity for the general public good.

Congress was given a constitutional power to "promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective writings and Discoveries."

6.

Affiant further intended that she would sublicense her Copyrights and Patents for royalties. She would sell and/or sublicense Trade Names and Trademarks and further intended to franchise Enchanted Minikin Greeting

Dolls and Cards[7]. This would not infringe on her right to mass produce products herself and engage in the sale of her own handmade originals, and work for hire.[8]

7.

She further established a "plan" and time period for research and development, and studio design to "stimulate" the imagination and provide the maximum productivity. This four year plan included the construction of the Building or remodeling. She further planned to design and develop products of intellectual, artistic and literary nature first, due to the high cost of research and development for mechanical products. Affiant intended the mass production, sublicensing and/or franchising of the former designs would eventually provide the funds to produce the mechanical designs. On the other hand, affiant was negotiating a "joint venture" work for hire project, TOYS FROM OUTER SPACE which in fact involved mechanical toys[9]. also negotiating another contract involving mass production of the ENCHANTED MINIKIN GREETING DOLLS AND CARDS and STICKIES[10]. This is a Genuine Issue of Material Fact.

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[7] See Exhibit Business Damages.

[8] Id.

[9] Id.

[10] Id.

a. Plaintiff was injured in the loss and interruption of these negotiations by the forced relocation of her business[11].

b. The contracts involved displays and museum backdrops for photography and design.

c. Plaintiff took almost a year to disassemble four years of work.

d. The destruction "aggrieved the feelings" of the artist, plaintiff, who handmade most of the creations.

e. Plaintiff experienced extreme mental suffering/mental anguish over the knowledge the loss was caused by intentional illegal acts.

f. Plaintiff was unable to produce products, lived in utter chaos with the museum stuffed into another location already used as a residence by Admiral John W. Smith.

g. Plaintiff's mental state would not allow her to concentrate on anything but investigating all parties in this litigation.

h. Plaintiff received threats that she would be "set up" if she pursued the matter in court. Plaintiff feared for her personal well being at beginning of the suit.

8.

Plaintiff experienced the very real threats and threat of actual loss in Federal Bankruptcy of Plaintiff's Intellectual, Artistic and Literary property rights through fraud,

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[11] See Flannery Deposition exhibits.

deceit, and intentional illegal acts of all defendants, and in continuity and coverup of original wrongdoing by defendant, Guy Flannery engaged in Federal Bankruptcy fraud. After refusing a Dation and/or half Dation, and forcing plaintiff to choose Bankruptcy when she had nothing to Bankrupt but the fraudulent real estate sale, he misrepresented the assets of the bankruptcy with a fraudulent appraisal to discharge the property from Bankruptcy Court. Both the property and the suit would have been an asset of the estate. Further he denied plaintiff her legal right to justice in the matter. Copyrights, Patents, Trade Name, Trade Marks, and Intellectual, Artistic, and Literary property becomes an asset of the Bankruptcy Court which caused "aggrievement of the artists feelings" and severe mental suffering. *See Windsor Communications Group, Inc.*, 80 B.R. 712, (Bkrptcy, E.D. Pa. 1987)[12]. Plaintiff's loss of her building has resulted in the same inability to market her products, as in the case cited, she also had greeting cards. The Fair Market Value of Loss of Use in considering the value of the greeting cards was not worthless; no evidence a modest profit was indicative of actual loss. The judge put a considerable value on the greeting cards. The plaintiff herein has numerous products in various degrees of marketing and this would apply to the loss of the building resulting in the same inability to market even though her Bankruptcy was dismissed[13].

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[12] See Exhibit Intellectual Artistic & Literary Damages.

[13] See Exhibit Damages & Expenses Litigation.

9.

Plaintiff used the business and/or building for intellectual, literary, and artistic purposes primarily, rather than sales the first 4 years of creation. It took plaintiff 4 years of 18 to 20 hour days to produce this body of work and build the building and environment. No sooner was the project and creations due for recognition and compensation then everything was on the auction block before her very eyes. *See McMorris v. Gulf States Utilities Co.*, 700 F. Supp 867.

Mental Suffering/Mental Anguish resulting from property damaged by intentional or illegal act, tort-feasor strictly liable for acts constituting nuisance, or when owner is present or nearby and suffers psychic trauma, *Blache V. Jones*, 521 So. 2d 530 (La. App. 4th Cir. 1988). Plaintiff was forced to destroy the very work it took 4 years to create and 1 year to dismantle. See *Landsberg v. Scrabble Crossword Game Players, Inc.*, 802 F.2nd 1193 (9th Cir. 1986) interference with a contract conditioned on payment, such belief was reasonable and not clearly erroneous. Damages awarded by author's losing opportunity to market his work as he saw fit. These are Genuine Issues of Material Facts.

a. Plaintiff clearly was engaged in contract negotiations at the time she discovered she had been injured.

b. Plaintiff was anticipating payment from these contracts.

c. Plaintiff did receive $1,000.00 to begin working on the project.

10.

Affiant spent considerable time preparing and providing funds necessary to create the environment, atmosphere and displays to stimulate thought, imagination, design and production of her products; including a vast source of research materials. Her designs were never intended to be simply "paintings". Affiant as early as June 23, 1978 invented 2 mechanical devices i.e. THE HEADACHE MACHINE and THE BACKBELT, for personal, commercial and medical purposes and production. A letter on her behalf by Judge Ray Holbrook to Patent Search Services, attached herewith, evidences her interests and intentions regarding products to be developed[14]. Plaintiff further dealt with Attorney, Michael Carbo, a Patent Attorney regarding her 1987 Copyrights and Patents.* These are Genuine Issues of Material Fact.

a. Plaintiff was injured in her business.

b. Injuries include real property, personal property, monetary and nonpecuniary business damages i.e. "aggrievment of the feelings of the artist" mental suffering/mental anguish, and literary, intellectual and artistic property damages.

c. Plaintiff was an artist: i.e. painter, designer, craftsman, seamstress, inventor, writer, photographer, and manufacturer.

d. Plaintiff is not a salesperson, wholesaler or retailer per se.

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[14] See Exhibit Patents.

e. Plaintiff is designer/manufacturer of products, whose handmade originals and/or mass produced products could be retailed, wholesaled, sublicensed, or franchised and commercially mass produced by others.

f. Plaintiff retains all rights to produce handmade originals and mass produce "limited editions" and originals from her own retail location and for other retailers, or wholesalers.

g. Plaintiff did sell thousands of her art products.

h. Enchanted Minikin Greeting Dolls are art.

i. Enchanted Minikin Greeting Dolls are art; especially when handmade by the artist as in the instant case.

11.

Affiant upon relocation, sought a suitable property to be used as residence and museum/store showcase affiant's arts, crafts, dolls and other products. Affiant intended to retail, wholesale and eventually mass produce limited edition originals at the subject property. As evidenced by copyright and patent applications and additional items documented by photographs[15]. Affiant did produce hundreds of paintings, frames, wood sculptures, costumes, photographs, dolls, outer space designs, and greeting cards, verse, and table furniture. She has hand painted all displays, backdrops, signs, and billboards. She intended that the Greeting Dolls and Cards would circulate throughout the country by retail and wholesale

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[15] See Exhibit Intellectual Artistic & Literary Damages.

operations, advertising the museum and home of the original Enchanted Minikins for tourist trade. The ultimate goal being the Ghost-Mart would develop into a Ghost Town tourist attraction wherein museum, on site manufacturing, and several retail buildings would highlight the sales of CaSSandra's Collectibles and Louisiana products.[16*] These are Genuine Issues of Material Facts.

a. Plaintiff's plan was on schedule since no product can be sold until it is created and exists.

b. Paintings were completed and on display for museum purposes, tourists, entry into art shows for recognition and credits in the art community.

c. In 1987, in fact plaintiff's art work was on display in jured shows locally, the Louisiana State Museum, In International competition, The Contemporary Arts Museum, and the New York Trade Show which brought about the licensing contracts.

d. Plaintiff's dolls were on display at approximately 7 stores and selling well. She was never disappointed with sales of her products and dolls; she was damaged from and disappointed with production.

e. Plaintiff never intended that one human would be capable of mass production with only two hands.

f. The J.T.P.A. project outlines the mass production program[17].

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[16] See Exhibit Business Damages.

[17] Id.

g. The L.P.C.C. project outlines the mass production potential including a contract with same[18].

h. The DHP contract and letter outlines the sublicensing and production for royalties..

i. The Enchanted Minikins were designed for mass production.

j. Income stream would have supported the business expenses if discovery of fraud had not interfered with contracts, reputation and production effecting local stores, and New York contracts.

k. Hello Dolly has sold thousands of Plaintiff's dolls.

l. Hundreds of orders go unfilled due to this litigation even on the handmade portion of the doll sales and effects plaintiff's income and business reputation.

m. Injuries and damages to plaintiff's business are a direct result of failure to supply customers, and restock retail stores, and inability to deal with any retailers including Hello Dolly which plaintiff can not keep up with orders.

n. Damages to business reputation by unfounded gossip generated by defendants has no effect on out of town and out of state business.

o. Production of dolls and failure to produce for stores and on contracts was a direct result of discovery of fraud, refusal to pay any more on the illegal real estate transaction, loss of the

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[18] Id.

studio/production area and supply area, work space, and lengthy and expensive litigation, and investigation of defendants.

12.

Affiant has never purchased property and was unfamiliar with both the process and more particularly the real estate market and the structure or level of property values in St. Tammany Parish in 1983, as she had just moved from the State of Texas. Affiant needed and sought the advise of a nationally known real estate agency to advise, assist and represent her in locating, negotiating and closing the contemplated purchase of a parcel of St. Tammany Parish commercial property, and trusted the parties involved to act in good faith[19].

13.

Affiant viewed numerous and repeated television and periodical advertisements of Century 21 both in Texas and other states, prior to her relocation and in Louisiana after the move. She further received publications from Century 21 and its agents, including advertisements and informational materials, through the United States Mail beginning in 1983. All of the television advertisements which affiant viewed for a decade and particularly 1983 in Texas, were run via the federal airwaves[20]. These are Genuine Issues of Material Facts.

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[19] See Original Complaint and Action Warranty.

[20] See New Commercials Generate Good Test Audience Reaction. Attached

a. Plaintiff is the "public" and as such an average person- produces the Article "New Commercial Generates Good Test Audience Reaction", Century 21 Real Estate Corporation publication, World News Roundup, Vol. 6, No. 6, 1979.

b. The advertisements were false and misleading[21]. Produced herewith is C21 Guaranteed Action Warranty with benefits of services stated[22].

c. Plaintiff did not receive said expertise, professionalism, neighborhood specialist or a trusted agent[23].

14.

Affiant was further induced to purchase real estate through the representations made by Century 21 on behalf of its franchisees and agents in Century 21's advertisements and informational materials. These materials led affiant to believe that her investment would build equity, would increase in value, and would provide cash flow and retirement benefits. More specific, that the "Fair Market Value" claims were consistent with the market at the time of purchase[24]. These are Genuine Issues of Material Facts.

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[21] See Deposition Excerpts attached.

[22] Supra.

[23] See Deposition Excerpts Pearson attached.

[24] See Deposition Pearson Exhibits.

a. No standard of care was exercised by C21 agent, Margaret Pearson.

b. No standard of care was exercised by C21 agent, Libby Bentson.

c. No standard of care was exercised by Don Smart in giving permission to introduce Buyer and Seller at a meeting.

d. No standard of care was exercised by C21 Don Smart & Assoc., Inc. by listing property in 1982 for a known excessive overvaluation.

e. No standard of care was exercised by C21 Parker-May & Assoc., Inc. by listing property in 1983 for a known excessive overvaluation.

f. No comparables existed in Lindberg Glen for property only, to justify this listing price; at any time 1983 to date.

g. Actual land sales will not lie.

h. In 1983 property in Lindberg Glen sold for approximately $2.00 per square foot.

i. In 1984 through 1985, the peak of market value, comparables in Lindberg Glen sold for approximately $2.00 to $3.50 per square foot. In fact land sold for $3.50 per square foot is the subject of a suit for overvaluation.

j. Plaintiff paid $275,000 for her property at over $5.00 per square foot.

k. Century 21 Don Smart & Assoc., Inc. listed the property for $350,000.

l. Century 21 Parker-May & Assoc., Inc. listed the property for $325,000.

m. The seller had Century 21 Guaranteed Action Warranty and Exclusive Listing Agreement with both agencies.

n. The property was listed and sold at excessive overvaluation[25].

15.

Affiant recalling over ten years of media image and numerous slogans claiming "Put Your Trust In Us", "We're Your Neighborhood Professionals", "You Can Trust Your Century 21 Agent, He is There For You", created an image of trust and expertise both written and verbal as well as subliminal inferences. Affiant as an artist has better than average recall for visual images which also recall the white picket fence, children playing and the famous "Century 21 Play House". She also was familiar with the Guaranteed Service of the Action Warranty. The advertisements indicate that property listed with a Century 21 would properly evaluate a "Fair Market Value" prior to taking a listing and therefore have knowledge of their own product and services as well as the "real property" they represent in a fiduciary capacity[26].

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[25] See Exhibit Appraisals & Comps.

[26] See Deposition Exhibits Bruce Oseland.

16.

Based on the aforementioned, affiant relied on Century 21 Real Estate commercials and advertising claims. The day after Christmas, December 26, 1983 plaintiff drove down Guase Blvd. in Slidell, Louisiana and decided to "walk in" Century 21 Don Smart & Assoc., Inc. and believed she recognized the name previously[27].

17.

Affiant found only one agent in the C21 office, Margaret Pearson who claimed she was "on duty" for the holiday. She would try to reach someone to fill in so she could show property later in the day. Affiant was very specific about her needs, lack of knowledge in real estate, areas of interest, unfamiliarity with the area and Louisiana period. she further made it clear and precise she would be dedicating long hours in her business. Her business was art and she intended to live at that location, however, she preferred a commercial location to live in, rather than a residential location to do business in. Affiant indicated she would look at everything even residential if applicable. The agent claimed she could handle both requirements and discussed a few properties stating she would obtain the listings and consult their computer for specifics. Margaret Pearson found a replacement and later called affiant to verify a time to meet. The specific properties to be included for showing were any with "for sale" signs on the East side of Lindberg Glen/I-10 which included the Flannery Lots 16 & 17; and any property

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[27] See Find A Home Advertisement attached.

with "for sale" signs along Gause Blvd. between I-10 and Military Road, and that same general area. During the office visit affiant had asked for local information and C21 information to educate herself. The agent looked for a "relocation package" and found only an incomplete set which affiant took. Multi-lists and additional informational and its franchisees and agents, Century 21 Parker-May & Associates and Century 21 Don Smart & Associates knew or should have known that the representations made by Flannery were not true, but by their silence participated in the scheme to dupe affiant into buying the property at an extremely inflated price.[29]

18.

Affiant stated that Century 21 Parker-May & Associates commissions from the sale were inflated as they were based upon the inflated sales price, and that this was a reason for Century 21 Parker-May's participation in the scheme.

19.

Affiant repeatedly asked her Century 21 agent if the list price, $325,000, was to high. Mrs. Pearson only replied that it was probably "a little high", being overstated by 5 to 20% of actual value. Namely, the property was listed at $16,250 to 65,000 above its actual value according to Mrs. Pearson. Century 21 Parker-May, by its silence,

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[29] Appraisals and Comps Max Derbes

perpetuated this misrepresentation, knowing that the property was listed at many times its actual value.[30]

20.

Affiant, completely unfamiliar with the area and unaware of he property's actual worth, suggested making an offer to purchase the property of $250,000. Mrs. Pearson, who participated in the scheme with Century 21 Parker-May & Associates to inflate the property's value, told affiant that the seller would think such an offer was "ridiculous" and would not consider Affiant to be a serious buyer.[31] Mrs. Pearson, again acting in conjunction with Century 21 Parker-May & Associates to increase the level of the sales commission as well as to artificially inflate Slidell area property values as a whole, insisted that affiant should make an offer of $300,000. However, an initial offer of $250,000 was made over Mrs. Pearson's protestations.[32]

21.

All of the defendants conspired together in closing the sale. Affiant was advised not to "bother" with an appraisal, and that it was unnecessary if the transaction was owner-financed. Affiant stated that these representations were made to prevent affiant from discovering the property's true worth.[33]

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[30] Deposition Excerpts- Pearson Attached

[31] Adm. J. W. Smith Affidavit Attached

[32] Deposition Pearson Exhibits

[33] Deposition Excerpts Pearson Attached

22.

Affiant stated that Flannery also began to pressure affiant to sign a purchase agreement, so that affiant could not obtain an appraisal within the time constraints placed upon affiant by Mr. Flannery.[33]

23.

When affiant requested the recommendation of an attorney, she was directed to defendant Waldon Hingle. Mr. Hingle's wife was employed by Century 21 Don Smart & Associates and Mr. Hingle in fact had done legal work for Don Smart. Mr. Hingle, therefore, could not be an impartial advisor to affiant and in fact participated, by his silence, in a scheme to sell the property to affiant at a price many times its value.[34]

24.

On December 30, 1983, affiant signed a purchase agreement, agreeing to pay $275,000 for the property located at Lots 16 and 17, Square 2, Lindberg Glen Annex Subdivision on the I-10 Service Road in St. Tammany Parish.

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[33] See Deposition Excerpts Pearson attached re:

Flannery Excerpt

[34] See Adm. J.W. Smith Affidavit attached

25.

Affiant did not discover the scheme until she considered listing the property for sale herself in December, 1987. On December 17, 1987, affiant was presented with a statement by Marge Pearson indicating that the "average market value" of the now-improved property was substantially less than what had been paid[35] for the virtually unimproved lot five years earlier. Affiant had improved the "shell" building by making its structurally sound and adding floors, walls, plumbing, insulation, and wiring.[36]

26.

Affiant averred that when differences arose between herself and Mr. Flannery after her discovery of the scheme, she demanded a reduction of the purchase price to its true value. By that time, affiant had already paid about $110,000 in principal and interest on the obligation to Flannery, who financed the transaction. Affiant stated that based upon a recent appraisal, the property was worth only about $89,000 in 1983 - 1984; so she had already paid, in principal and interest far more than the property was actually worth. The Flannerys refused and foreclosed on the property during the dispute.[37]

27.

Further, affiant had signed a promissory note for the financed portion of the purchase price, for which she is

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[35] See Deposition Pearson Exhibits

[36] See Building Expenses

[37] See Appraisals and Comps. Max Derbes

obligated. The purchase price of $275,000 was about $185,000 more than, or more than 3 times the property's actual worth. The property is only worth about $84,000 today.[38]

28.

Affiant stated that defendants, particularly Century 21 Parker-May & Associates knew or should have known of similar sale-resale schemes throughout the SLidell area to artificially inflate area land values by using inflated comparables.[40]

29.

Affiant stated that all of the defendants, and Century 21 Parker-May & Associates in particular, conspired by use of telephone wires, television advertisements and/or the U.S. Mails to defraud her.[41] [42]

30.

Affiant stated that the actions of the defendants, and Century 21 Parker-May & Associates in particular, constitute at least two acts of fraud in connection with the use

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[38] See Original Purchase Flannery Attached

[39] See Photo Lot 12, 13, 14 Suit/Photo Lot 16, 17 Attached

[40] See C21 Parker-May & Assoc. Suit Attached

[41] See NAF Fund Advertisement Attached

[42] See Deposition Exhibits Bruce Oseland

of telephone wires and the U.S. Mails and as such represent a pattern of proscribed activity under the Civil Rico statute. The inflation of the property's value will affect comparables used in other appraisals, allowing similar schemes to be perpetrated. This drives up commission income as well as profits from each sale, which are reinvested in the enterprises named herein, including Century 21 Parker-May & Associates.[43]

31.

Affiant further avers that defendants, particularly Century 21 Parker-May & Associates engaged in unfair methods of competition and deceptive trade[44] practices in violation of La. R.S. § 51:1405.[45]

32.

Affiant stated that she has lost $185,000 due to the difference between the sales price and the property's actual worth, $110,000 of principal and interest paid on the obligation to he Flannery's prior to the foreclosure, $1,300,000 due to the closure of her business in lost profits and business opportunities on foreclosure, and **damage to her business reputation, as well as extreme mental anguish from the transaction and later disputes which cumulated in the foreclosure and loss of her**

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[43] See Exhibits Commercial Property & Suits

[44] See C21 Parker-May & Assoc. Suit Attached

[45] See Deposition Pearson Exhibits- Listings

business, for which affiant seeks $500,000 in compensation.[46]

33.

Affiant has already incurred $ 56,000.00 in attorneys' fees, plus court costs, plus interest from date of demand. Affiant further stated that as a punitive measure, all damages should be trebled.[47]

REQUIREMENTS OF H. J. INC. V. NORTHWESTERN BELL TELEPHONE CO. **109 S. Ct. 2983 2989-2902 (1989)**

DON R. SMART
CENTURY 21 DON SMART & ASSOCIATES., INC.

1.

(2) Predicate Acts: Mr. Smart has engaged in personal investment and as a Borker i.e. Century 21 Don Smart & Associates directly associated with the RICO Enterprise and telephone, TV wires and mailings all of which injured plaintiff thru advertising which was false and misleading. This is verifiable by the funds 2% payable by each and every Broker from the gross revenues of all real estate transactions.[48] The deposition of Mr.Oseland of Century 21 Real Estate Corp. outlines this point.

As a Broker and personally Mr. Smart has purchased and sold property in and around the subject property and

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[46] See Exhibits Business Damages

[47] See Summary of Actual Damages Attached

[48] See Deposition Exhibits Oseland

some involve appraisals like the one in Eastway Group.[49] These overvaluations have directly effected St. Tammany land values.[50] Suits and claims against the corporation are very similar to mine. The original listing for $350,000 at C21 Don Smart & Associates involved the mails. It is a Genuine Issue of Material Fact.

a. The property was first excessively over-valued and listed with C21 Don Smart and Assoc.

This is an overt act that involves mailings and listings.[51] It is also an overt act and false and misleading in advertising and thereby subject to mail fruad predicates. There is a Genuine Issue of Material Fact.

a. Whether it is part of the scheme to give permission to introduce and/or set up the buyer and Seller together- which defendant Pearson claims you was given directly by Mr. Smart.

Mr Smart has established that he is atleast 50% percent owner in C21 Don Smart and Assoc. and therefore received funds from this real estate transaction thru his ownership participation. Since he admitted little direct communication with the firm using his name, these funds can be considered mailed.[52]

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[49] Eastway Group I-10 Development Attached

[50] See Exhibits Commercial Prop. and Suits

[51] See Deposition Flannery Exhibits- Listings

[52] See Motion For Summary Judgment- Don Smart

II.

Mr. Smart and Attorney, W. M. Hingle who was on retainer to the corporation have both established a "pattern" in documents supplied herewith.[53] Both are familiar with previous suits and Fiduciary duty of agents. Pearson's activities are fully outlined and attached and state all facts of predicate acts and overt acts. Her pattern is clear and several mailings relate directly to W. M. Hingle. It is a Genuine Issue of Material Fact.

a. Whether it was part of the scheme to refer Hingle as an attorney to Purchasers and intentionally withhold knowledge a Conflict of Interests exists.

It is a Breach of Fiduciary Duty on the part of both the agent, Margaret Pearson in failure to adhere to any standard of care as per her deposition and admitted.[53]

It is a Breach and a Conflict of Interest on the part of plaintiff's attorney to fail to adhere to any standard of care.[54]

Mr. Smart is participating in the same activity and therefore aiding and abetting. These acts are in furtherance of and completion of the whole scheme as shown in the RICO Enterprise Chart.[55]

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[53] See Comm. Prop. and Suits

[53] See Deposition Excerpts Pearson Attached

[54] See Motion For Summary Judgment Hingle, Notary

[55] See Exhibits Appraisals and Comps/Commercial Prop. & Suits

It is a Genuine Issue of Material Fact that in two years C21 Don Smart and Assoc. gained fast and phoe-nominal growth.[56]

Affidavit

BEFORE ME, the undersigned authority, personally came and appeared,

SANDRA SEEFELD

a person of the full age of majority who declared, under oath to me, Notary declared that she has read the above AFFIDAVIT AND STATEMENT OF MATERIAL FACTS; and that all of the facts contained therein are true and correct to the best of her information, knowledge and belief.

/s/ Sandra Seefeld
SANDRA SEEFELD

Sworn to and subscribed

before me this 2nd day

of July.

(Seal)

/s/ James F. Quaid

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[56] See News Article Career Night Attached

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD, Plaintiff	*	CIVIL ACTION
	*	NO. 88-5540
versus	*	
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO. Defendants	*	SECTION "J"
	*	MAG.DIV. 4

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STATEMENT OF CONTESTED FACTS

NOW INTO COURT comes Plaintiff, Sandra Seefeld, and submits the following material facts are contested:

1. Plaintiff has adduced evidence of a scheme(s) to defraud her.

2. Plaintiff has adduced evidence of Defendant, C 21 REC, participating in or having knowledge of a scheme(s) to defraud her.

3. Plaintiff has adduced evidence of other defendants participating in a scheme(s) acting on behalf of Defendant, C 21 REC.

4. Plaintiff has adduced evidence of predicate acts necessary to support a RICO claim.

5. Plaintiff has adduced evidence of a pattern of racketeering activity which meets the requisite standard of existing or threatened criminal activity.

6. Defendant, C 21 REC, has a RICO/contractual relationship with all Defendants in this suit.

7. Defendant, C 21 REC, made representation through its national TV and print media advertisements about the trust worthiness of Defendants, Don Smart & Associates, Inc., and Parker-May & Associates, Inc., upon which Plaintiff relied to her detriment.

8. The advertising that Plaintiff relied upon was broadcast prior to her signing the purchase agreement that is the subject matter of this suit.

9. Defendant, C 21 REC, provided materials used by Defendants, Don Smart & Associates, Inc., and Parker-May & Associates, Inc., which caused injury to Plaintiff.

10. Defendant, C 21 REC, received funds from the proceeds of the sale to Plaintiff and reinvested these funds in its business operations.

11. Defendant, C 21 REC, has not provided any evidence of its being a corporation and/or having only one office, only a conclusory statement from one person who could not qualify as a Rule 30(ὐ)(6) person.

12. Defendant, C 21 REC, has not provided any evidence of its not having any franchisees when it does admit it has ***subfranchisee*** [emphasis supplied].

Respectfully submitted,

JAMES F. QUAID, Professional Law Corporation

Attorney for Plaintiff
LSBA No. 10915
P.O. Box 73295
Metairie, Louisiana 70033
504-455-4440

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD, Plaintiff	*	CIVIL ACTION
versus	*	NO. 88-5540
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO. Defendants	*	SECTION "J" MAG.DIV. 4

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PLAINTIFF'S FIRST AMENDED
AND SUPPLEMENTAL AFFIDAVIT

NOW INTO COURT, through undersigned counsel, comes Sandra Seefeld, who seeks to amend and supplement her original Affidavit as follows:

1.

To add paragraphs numbered 34 through ___ to the Affidavit.

2.

To add to paragraphs numbered 13 through 33, and paragraphs numbered I and II, pages 27 to 29, of the Affidavit to read as follows:

3.

To add to paragraph "13" of the Affidavit to read as follows:

Affiant believes she is the victim of an overall scheme using the airwaves, wire and mail to disseminate false and misleading advertising. Viewing and receiving these commercials and advertisements caused her to rely on a structured and polished "Blue Suede Shoes" scheme which faded into an interlocking campaign scheme of "Bait and Switch" designed to create excessive profits in land sales transactions. The advertising campaigns aided each other in false representations, misleading advertising, both explicit and demonstrably false statements of material facts, and unfair and deceptive trade practices. Phase I involves Century 21 Real Estate Corporation in creating the "Blue Suede Shoes" campaign to introduce a polished and trusted C21 System, designed to train Brokers and Agents as trustworthy, friendly, real estate experts, and Neighborhood Professionals.

Phase II, also participated in as a "principle", by Century 21 Real Estate Corporation, as Trustee for the N.A.F. The interlocking scheme of "Bait and Switch" involves knowing deceit, wrongful intent and conduct both indirectly and directly related to the other defendants' separate and distinct "Pattern of Racketeering Activity" and schemes to create excessive profits in land sales transactions; which generated funds for the RICO Enterprise. Once baited, commercials switch over to Phase II where ads are directed at buyers and sellers of real estate. The secondary campaign attempts to coverup misrepresentations and false statements with "Each

Office is Independently Owned"; However, a smoke screen exists as to whether this applies to the Franchisor/ Owner Ads, Franchisee/Agent ads or the Buyer/Seller commercials themselves; or the "separate and distinct pattern of racketeering activity" engaged in by the independently owned Brokers and their Agents. The common thread throughout each type of commercial is the C21 System of training and the expertise of agents who deal directly with the public. These are Genuine Issues of Material Facts.

a. Plaintiff did see each type of commercial over the years.

b. Plaintiff did rely on the expertise of two Brokers and two agents.

c. The C21 System does not "train" agents.

d. Plaintiff remembers the "impact" of the image of C21 System and statements made.

e. 60 seconds for viewer recall would not ascertain whether it was produced and paid for by Century 21 Real Estate Corp., Century 21REC, as Trustee for the NAF, or National Advertising Fund for a Local Broker, or a Broker's commercial, however she recalls many commercials.

f. 60 seconds for viewer recall would not include silent notations, of "Independently Owned", and she does not believe it is on the "Franchising" commercials, but she does recall the commercials.

g. 60 seconds for viewer recall would not indicate whether it was an International spot, Regional ad or Local commercial, but she

remembers slogans, subjects, claims and visual-pictorials.

h. Advertisements claimed agents were your Neighborhood Professionals, you could trust your friendly neighborhood Specialists: Broker and Agents. Put you trust in Number 1, Century 21.

i. Commercials claimed agents were experts in real estate details and could help in all aspects of buying and selling property. The Neighborhood Specialist: could better evaluate and sell your property. They were trained to help you in relocation with their nationwide network of expertise.

j. The commercial "Making Home Afforable" does not reflect accurately upon **overvalued listings**.

k. **"Independantly Owned and Operated"** is not a legal license to make false statements of material facts in advertising and misrepresentations.

l. The Franchise may be independently owned; the C21 System, and the advertising is not or the funds derived from all of the aforementioned.

m. No where in the commercials or advertising does it state verbally or in writing that all claims are not true or may not be true.

In fact Century 21 Real Estate Corporation participated in Gallup Polls every year to the present date. The Corporation had knowledge of the impact on the public and intentionally geared its advertising to prey upon the public based on the information. The agent and public-

consumer relationship in the advertisements is severed from the agent and customer relationship – reality.

RICO ENTERPRISE FLOW CHART

PROHIBITED ACTIVITIES

1962(a-c) & (d)

1964c

CENTURY 21 REAL ESTATE CORPORATION

1.

Section 1962(a-c) the RICO Enterprise may be both the Enterprise and the Defendant. Century 21 Real Estate Corporation, 1962(a) RICO Enterprise, and Century 21 Real Estate Corporation as "Trustee", 1962(c) Defendant, thru the National Advertising Fund, (NAF); is employed by, and associated with the RICO Enterprise engaged in activities of which affect interstate and foreign commerce; and, participating directly, in the conduct of such enterprise's affairs through the (NAF); mail, TV communications, and wire fraud related to an overall scheme to raise profits in land sales transactions by false and misleading advertising and a separate and distinct "Pattern of Racketeering Activity".

2.

1962(a)

Century 21 Real Estate Corporation, the **RICO Enterprise**, has received a portion of the 6% income derived from the gross revenues earned on Sandra Seefeld's land sales transaction; directly from a pattern of racketeering.

1962(c)

Century 21 Real Estate Corporation, as **"Trustee" Defendant,** thru the National Advertising Fund, (NAF), has received a portion of the 2% income derived from the gross revenues earned on Sandra Seefeld's land sales transaction, directly from a pattern of racketeering.

3.

Use and Investment of Funds

Century 21 Real Estate Corporation, the **RICO Enterprise,** has participated within the meaning of Section 2, Title 18, US Code to use and invest, directly a portion of such income in the operation of Century 21 Real Estate Corporation, which is engaged in the sale of franchises, Century 21 System Services, products and advertising which affects interstate and foreign commerce.

Century 21 Real Estate Corporation, as **"Trustee" Defendant,** thru the National Advertising Fund, (NAF) has participated within the meaning of Section 2, Title 18, US Code to use and invest, (Century 21 International and Century 21 Regional shall be entitled to reimburse themselves for reasonable accounting, collection, bookkeeping, reporting and legal expenses incurred with respect to the NAF) and (The authority to make disbursements from the fund is granted through a National Advertising Fund Management Committee within Century 21 Real Estate Corporation.) directly a portion of such income in the operation of Century 21 Real Estate Corporation, National Advertising Fund Management Committee, and

the NAF which is engaged in advertising Century 21 System services, products, training, advertising and sale of franchises which affects interstate and foreign commerce.

4.

Scheme

Century 21 Real Estate Corporation, the **RICO Enterprise,** has reinvested funds derived, directly from predicate acts of false statements, misrepresentations and omissions and/or concealment of material facts, mail TV communications and wire fraud related to an overall scheme to raise profits in land sale transactions thru false and misleading advertising, and a separate and distinct pattern of racketeering activity.

Century 21 Real Estate Corporation, as **"Trustee" Defendant,** thru the National Advertising Fund, (NAF) i.e. **National Advertising Fund Management Committee,** and **Century 21 National Advertising Fund Counsel** has reinvested funds derived , directly from predicate acts of false statements, misrepresentations and omissions and/or concealment of material facts, mail TV communiations and wire fraud related to an overall scheme to raise profits in land sale transactions thru false and misleading advertising, and a separate and distinct pattern of racketeering activity.

5.

Separate and Distinct

"Pattern of Racketeering Activity"
1962(c)

Century 21 of Texas, Inc.(Century 21 Gulf Central States, Inc.), **Defendants,** has associated with the RICO Enterprise and has participated directly in the conduct of the Enterprise's affairs thru the **National Advertising Fund, (NAF)** and **National Advertising Fund Counsel,** and **Century 21 Real Estate Corporation,** and mailed a portion of the 2% and a portion of the 6% of gross revenues earned on Sandra Seefeld's land sales transaction in the amount of $275, 00.00, to the NAF and Century 21 International; funds derived directly from a pattern of racketeering activity of **1) Century 21 Don Smart and Associates, Inc., 2) Century 21 Parker-May and Associates, Inc., 3) Hingle and Associates, Inc., 4) Century 21 Real Estate Corporation, Defendant, and 5) as "Trustee" for NAF i.e. National Advertising Fund Management Committee.**

Century 21 of Texas, Inc. is associated with the original mailings, TV communications, and wire fraud of Century 21 Real Estate Corporation, further mailings in furtherance and completion of the overall scheme to raise profits in land sale transactions thru false and misleading advertising, and specific intent to participate in the NAF.

6.

1962(c)

Century 21 Parker-May and Associates, Inc., Defendants, have associated with the RICO Enterprise and participated directly in the conduct of the Enterprise's affairs thru the **National Advertising Fund, (NAF),** and **National Advertising Fund Counsel, Century 21 International Relocation Program (INRELO),** and **Century 21 of Texas, Inc.** (Century 21 Gulf Central States, Inc.) and mailed the 2% and 6% of gross revenues earned on Sandra Seefeld's land sales transaction in the amount of $275,000.00 to Century 21 of Texas, Inc.; funds derived, directly from a pattern of racketeering activity of **1) Defendants herein, 2) Century 21 Don Smart and Associates, Inc., 3) Agent, Libby Bentson, 4) Agent, Margaret Pearson, 5) Guy T. Flannery, 6) Century 21 Real Estate Corporation, Defendant, and 7) as "Trustee" for NAF i.e. National Advertising Fund Management Copmmittee.**

Century 21 Parker-May and Associates, Inc. is associated with the original mailings, TV communications, and wire fraud of Century 21 Real Estate Corporation, further mailings in furtherance and completion of the overall scheme to raise profits in land sale transactions thru false and misleading advertising, and specific intent to participate in the NAF; further intent of schemes by **Defendants** herein to defraud and raise profits on property transactions thru misrepresentations, overvaluation, contract fraud in land sales. The Broker received $8,250.00 from the land sale.

7.

1962(c)

Century 21 Don Smart and Associates, Inc. and **Donald R. Smart, Defendants,** have associated with the RICO Enterprise and participated directly in the conduct of the Enterprise's affairs thru the **National Advertising Fund, (NAF),** and **National Advertising Fund Counsel,** and **Century 21 of Texas, Inc.** (Century 21 Gulf Central States, Inc.) and mailed the 2% and 6% of gross revenues earned on Sandra Seefeld's land sales transaction in the amount of$275,000.00 to Century 21 of Texas, Inc.; funds derived, directly from a pattern of racketeering activity of **1) Defendants herein, 2) Century 21 Parker-May and Associates, Inc., 3) Agent, Libby Bentson, 4) Agent, Margaret Pearson, 5) Guy T. Flannery, 6) Century 21 Real Estate Corporation, Defendant, and 7) as "Trustee" for NAF i.e. National Advertising Fund Management Committee.**

Donald R. Smart and Doug Smart thru Century 21 Don Smart and Associates, Inc. have participated directly in the conduct of the Enterprise's affairs thru **Century 21 Securities Corporation and Cenguard Insurance Corporation,** and further intent of schemes by **Defendants** herein to defraud and raise profits on property transactions thru misrepresentations, overvaluation, use of federally funded financing, and flipping land sales. Century 21 Don Smart and Associates, Inc. is associated with the original mailings, TV communications, and wire fraud of Century 21 Real Estate Corporation, and mailings in furtherance and completion of the overall scheme to raise profits in land sale transactions thru false and misleading

advertising. The Broker received $8,250.00 from the land sale.

8.

1962(c)

Century 21 Don Smart and Associates, Inc.; **Agent, Margaret Pearson, Defendant** is associated with the RICO Enterprise through the Broker and participated directly in the conduct of the Enterprise's affairs in a separate and distinct pattern of racketeering activity as a "principle". She derived funds directly from 3% commission of gross revenues earned on Sandra Seefeld's land sales transaction in the amount of $8,250.00. She acted in consort with a pattern of activity of **1) Donald R. Smart, 2) Walden M. Hingle, 3) Agent, Libby Bentson, 4) Broker, Pam Parker and Debra May, 5) Guy T. Flannery and "third-party" Jim Hulsey**; and collected $5,000.00 earnest money from Smith.

Margaret Pearson is associated with the original mailings, TV communications, and wire fraud of Century 21 Real Estate Corporation, and participated in misrepresentations, false statements, omissions and/or concealment of material facts, further mailings associated with the act-of-sale and again the same predicate acts in the "resale" listing; in furtherance and completion of the overall scheme to raise profits in land sale transactions thru false and misleading advertising, and other schemes of overvaluation in listings and "fair market value analysis".

9.

Century 21 Parker-May and Associates, Inc., **Agent, Libby Bentson, Defendant,** is associated with the RICO Enterprise through the Broker and participated directly in the conduct of the Enterprise's affairs in a separate and distinct pattern of racketeering activity as a "principle" with Pam Parker and Debra May, personally. She derived funds directly from 3% commission of gross revenues earned on Sandra Seefeld's land sales transaction in the amount of $8,250.00. She acted in consort with a pattern of activity of **1) Century 21 Don Smart and Associates, Inc., Donald R. Smart, 2) Waldon M. Hingle, 3) Pam Parker and Debra May, 4) Guy T. Flannery and "third-party" Jim Hulsey.**

Libby Bentson is associated with the original mailings, TV communications, and wire fraud of Century 21 Real Estate Corporation, and participated in misrepresentations, false statements, omissions and/or concealment of material facts, further mailings associated with the act-of-sale and separate pattern of activity of Guy T. Flannery's and "third-party", Jim Hulsey's misrepresentations, false statements and concealmnent of material facts, set-up, fraud and overvaluation of property; each in furtherance and completion of the overall scheme to raise profits in land sales transactions thru false and misleading advertising, and other schemes designed to overvalue property to raise profits; and collected $5,000.00 earnest money from Seefeld.

10. 1962(c)

Claire Olsen, wife of/and Guy T. Flannery, Defendants, are associated with the RICO Enterprise thru both Brokers, Century 21 Don Smart and Associates, Inc. and Century 21 Parker-May and Associates, Inc., having had (3) listings with both agencies between 1982 and 1984. He participated as a "principle" directly in the conduct of the Enterprise's affairs in a separate and distinct pattern of racketeering activity with "third-party", Jim Hulsey. Mr. and Mrs. Flannery derived funds directly from $55,000.00 down payment and $220,000.00 owner-financing scheme on Sandra Seefeld's land sales transaction in the amount of $275,000.00. He acted in consort with **1) Century 21 Don Smart and Associates, Broker Don Smart, 2) Century 21 Parker-May and Associates, Brokers' Pam Parker, Debra May, 3) Agent, Libby Bentson, 4) Agent, Margaret Pearson, 5) Waldon M. Hingle and 6) Jim Hulsey.**

Guy T. Flannery, is associated with the original mailings, TV communications, and wire fraud of Century 21 Real Estate Corporation, thru fraudulent listings with both Brokers, and participated in misrepresentations, false statements, omissions and/or concealment of material facts, further mailings associated with the act-of-sale, separate pattern of activity with "third-party" set-up, misrepresentations, phony offers, fraudulent listings, phony appraisals in furtherance and completion of the overall scheme to raise profits in land sale transactions thru false and misleading advertising; and other schemes of overvaluation: in relisting, Federal Bankruptcy Court, Sheriff's Sale, resale and relistings. Mr. Flannery created a **"Dog and Pony Show"** distraction and participated in

Century 21 Parker-May and Associates, Inc. **"The Bum's Rush"** tactics. Mr. Flannery participated in a related pattern of racketeering activity involving contract fraud, interstate mailings and misrepresentations, and false statements of material facts in the nursery business resulting in final judgment against him. He also received $110,000.00 mortgage payments from Seefeld.

11.

1962(c)

Hingle and Associates, Inc., Waldon M. Hingle, Defendant, is associated with the RICO Enterprise and participated as a "principle" directly in the conduct of the Enterprise's affairs. Mr. Hingle passed acts-of-sales for both **Century 21 Parker-May and Associates, Inc. and Century 21 Don Smart and Associates, Inc.,** being "on retainer" to the later both businesswise and personal to Don Smart. A closing attorney is directed by **Century 21 Franchise Agreement, Region #114,** to mail the 2% and 6% gross revenues earned on land sales transactions, immediately to **Century 21 Regional** or **Century 21 International.** Waldon M. Hingle received $5,150.00 earnest money deposit and $51,353.93 cashier's check, together representing the down payment and portion from which the 2% and 6% gross revenues earned on Sandra Seefeld's land sales transaction in the amount of $275,000.00 was disbursed to **Century 21 of Texas, Inc., Century 21 Real Estate Corporation, and as "Trustee", The National Advertising Fund (NAF);** funds derived, directly from a pattern of racketeering activity.

Waldon M. Hingle is associated with the original mailings, TV communications, and wire fraud of Century 21 Real Estate Corporation, by virtue of the above acts-of-sales, litigation, disbursement of funds, and further mailings in furtherance and completion of the overall scheme to raise profits in land sale transactions thru false and misleading advertising, and specific intent to participate in the NAF. He has paricipated as a "principle" in other schemes with knowledge of over valuation, use of Federal funds in financing, flipping, and misrepresentations, false statements, omissions and/or concealment of material facts, and Conflict of Interests between clients (buyers) without acknowledgement, and misrepresenting "attorney" status with both parties, for the purpose of raising property values and profits on land sales transactions.

1962(d)

Waldon M. Hingle, and **"all defendants"** are associated with the act-of-sale mailings and overt acts in furtherane and completion of schemes which aided and abetted each others' own pattern of racketeering activity. On February 29, 1984, Mr. Hingle put the final touch to his **"Blue Suede Shoes"** acts, with all parties agreeing to complete the scheme thru overt and predicate acts, and funds received directly from a pattern of racketeering activity and disbursed to the following parties in conspiracy: **Century 21 Don Smart and Associates, Inc., Broker, Don Smart, Agent, Margaret Pearson, Century 21 Parker-May and Associates, Inc ., Brokers Pam Parker and Debra May, Agent Libby Bentson, Waldon M. Hingle, Attorney, Hingle and Associates, Claire Olsen Flannery**

and Guy T. Flannery, and disbursement of 2% and 6% to Century 21 of Texas, Inc., Century 21 Real Estate Corporation, and as "Trustee" for The NAF i.e. National Advertising Fund Management Committee.

Waldon M. Hingle and Don Smart have participated as "principles" in a pattern of activity which includes Drews v. Giangrosso, Village Apartments, Eastway Group, Seefeld, and Elguezabal and not limited thereto. Hingle is knowledgable of sales, participates in purchase of over valued property, litigation, financing and schemes on same property from beginning to end. (To aid and abet racketeering under Sec 1962 (a), (c), or (d) one does not need to be an attorney, notary, or fiduciary. it states ***(ANY PERSON)***

To add to paragraph "17" of the Affidavit to read as follows:

Affiant does not recall specifically the contents of the mailing by Margaret Pearson. Only that she repeatedly forgot to bring extra copies of properties to be shown that were independent of her listing book. She discussed her using the C21 computer for information, however, whether this is different from the MLS, affiant does not know. The Flannery property was either a MLS or news paper ad. The 1983 information was sent just prior to her leaving town, when she was again reminded affiant wanted information to review. In addition to the mailings, Margaret Pearson made numerous false statements prior to 1983 offer to purchase, in collusion with other defendants thru, up to the act-of-sale, and again in coverup of the original sale – during the 1987 listing for resale. These are Genuine Issues of Material Facts.

a. Claimed that the subject property listing at $325,000 was fair market value.

b. Claimed that Mr. Flannery's statements to the worth of the property being $300,000 to $400,000 was within fair market value for the Lindberg Glenn area.

c. Claimed the listed price of $325,000 was 10% to 15% high profit range due to the World's Fair and the Slidell agrea being the 9th fastest growing area in the USA.

d. Claimed all property in Slidell area fell into the 10% to 15% profit range for the same reason.

e. Claimed Mr. Flannery feels his property is worth $325,000 to $400,000 and her offer of $250,000 – She would not be taken as a serious buyer.

f. Claimed her offer of $250,000 was rediculous.

g. Claimed she would have to talk directly to the seller if she offered $250,000.

h. Claimed Mr. Flannery would have to talk to her directly because he "did not want to get ripped off for his property by some big business coming in."

i. Claimed the listed price was within the fair market value range, and she was basing this on market data research – Computer information in the office (C21 Don Smart and Assoc.) showing area comparables i.e. comps for Lindberg Glen area.

j. Claimed she was comparing values with other multiple listing information in the area.

k. Claimed she did not find Mr. Flannery hard to deal with personally, that he was a fine person and reputable.

l. Claimed the property had never listed below $325,000.

m. Claimed the property was in a great location for resale, good potential for investment purposes.

n. Claimed she would always be able to get her equity back.

o. Claimed in 1988 – the property was worth the $275,000 she had paid in 1984.

p. Claimed in 1988 – the difference between what she previously paid and the current fair market value was simply a 30% drop in the market conditions everyone else was experiencing.

q. Claimed in 1988 – that the current fair market value of the property was $211,832 including the building.

r. Claimed in 1988 – that the building had a current value of $46,000.

s. Claimed in 1988 – that the $211,832 was based on her experience in the real estate field, current market conditions, comparable sales in the Lindberg Glen area.

t. Claimed that the building value was based on sales in the area for office space as per square footage available. $25.00 per square foot.

u. Claimed that I should list the property for $250,000 to $275,000 to attract a buyer.

v. Claimed in 1988 – that she was doing everything possible to help her sell the subject property.

w. Claimed in 1988 – that she did not need to know what the appraisal value of her property was because she was the seller.

x. Claimed in 1988 – that she did not need to know about appraisal value of her property in 1984 because she was the buyer and it was owner-financed – an appraisal was not required by the owner.

y. Claimed in 1988 – she did a "Fair Market Analysis" on the subject property before listing same.

z. Claimed in 1983 – she needed Don Smart's approval as Broker to introduce the buyer to seller; she ACKNOWLEDGED to affiant this permission was received directly from Mr. Smart.

Misrepresentations:

1. Misrepresented Mr. Waldon M. Hingle as an attorney that could represent affiant in all legal matters requested i.e. personal, business, taxes, and real estate.

2. Misrepresented and Concealed the fact that Waldon M. Hingle was "on retainer" to C21 Don Smart and Assoc. and Don Smart personally.

3. Misrepresented and Concealed the fact that Waldon M. Hingle represented her in both business and personal capacity.

4. Misrepresented and Concealed the actual fair market value of the property.

5. Misrepresented Century 21 Don Smart and Associates as reputable, honest and expert Broker in commercial real estate with qualified agents in the local market.

6. Misrepresented herself as a qualified agent capable of handling commercial as well as redential real estate sales.

7. Misrepresented the resale value, investment potential, and risk of equity placed in the property at the time of purchase relative to the listing and/or sale price.

8. Misrepresented Century 21 Real Estate Corp. advertising claims, C21 Code of Ethics, the Louisiana Real Estate Commission, N.A.R. and the St. Tammany Board of Realtors – all claiming their agents subscribe to a higher and stricter Code of Ethics. All agents are legally and morally sworn to uphold and protect the general public.

9. Misrepresented and Concealed the owner financing loan was an attractive alternative to the red tape of bank financing to avoid appraisal.

10. Misrepresented and Concealed the fact that the the original financing terms of $85,000 down, was actually the full value of the property, and left a balance to finance of $265,000 without basis in reality.

11. Misrepresented and Concealed the fact that the Fremaux Exit was in fact not coming in

the following year as stated by Mr. Flannery and Mr. Hulsey. That the news paper and other sources throughout the prior month made this public.

The Louisiana Real Estate License Commission for the State requires agents to adhere to a Code of Ethics wherein it specifically states the Selling Agent is responsible for obtaining all pertinent information from the Listing Agent to better inform the purchaser.

Fair Market Value is stated in appraisals, as a willing Buyer and a willing Seller, both acting with equal knowledge of the facts. The following is a list of known concealments or omissions:

a) Omission that the building shell was constructed by Mr. Flannery and was structurally unsound and dangerous.

b) Omission that wiring to the entire lot and building hung in one mess behind a single wall panneling. Only a few circuits exixted and were overloaded, hot spots in the yard, exposed wires and other fire hazzards caused safety problems.

c) Omission of unsanitary health conditions existed behind the panneling with rat infestation 1/4 to 1/2 way up the walls.

d) Omission that rafter were incorrectly spaced and 5' or more spans making the roof unsafe, impossible to correct, or insulate, and created costly AC and heating expenses.

e) Omission the roof needed to be replaced immediately due to excessive leaks at the first rain.

f) Omission the building violated so many building codes, it was vertually uninsurable.

g) Omission that plastic sheeting under the ground caused flooding under the building and was not correctable.

h) Omission that the shopping center claims by Mr. Flannery were not possible in 1979 most likely untrue statements.

i) Omission of discussion regarding appraisal versus fair market value benefits.

j) Omission of any Lindberg Glenn comparables.

K) Omission of Mr. Flannery's former listing with C21 Don Smart and Assoc.

Margaret Pearson, did infact fall into the the requirements of H.J.Inc. v Northwestern Bell Telephone Co., having comitted numerous mailings, predicate acts of false statements of material facts in connection with a scheme, and in reference to the association with the act-of-sale documents and mailings therewith (corrected to read 3-22-84 and not 4-2-84) depicting atleast 2, if not more separate mailings. See the following outline as properly indicated from reading the Rico Case Statement, Complaint, Amended Complaint and deposition of Margaret Pearson.

Margaret Pearson also returned in 1987 to commit similar acts, as well as new actsincluded in all documentation of original paperwork, and the resale listing paperwork formerly offered to this court with Plaintiff's

Affidavit. She also participated in overt acts in furtherance and completion of the schemes for the purpose of aiding and abetting.

The following pages relating to the Rico Case Statement adequately represent the act-of-sale documents evidencing atleast 2 mailings on all Defendants in this litigation associated therewith. It should also be noted once Pearson saw Waldon Hingle released on Summary Judgment prior to the end of Discovery – she finally in her Summary Judgment admits to Plaintiff requesting an Attorney, not Notary.

REQUIREMENTS OF H. J. INC. V. NORTHWESTERN BELL TELEPHONE CO. 109 S. CT. 2983 2989-2902 (1989)

MARGARET PEARSON

1.

Proof of (2) Predicate Acts: Plaintiff's Amended RICO Case Statement outlines numerous "overt acts" of misrepresentations, false statements and omissions of material facts to be relied upon at trial. These phone calls ***do not*** have to be **"interstate wire"** communications. They indicate and outline deceit and trickery causing the real estate transaction to be fraudulent and subsequent mailings considered **"predicate acts"**.

The original mailings include:

1-1-84 Received mult-listings and/or comparables, promotional material/C21REC, local advertisment on C21 Don Smart & Assoc., Inc. See Affidavit of Sandra Seefeld;

Affidavit of Admiral John W. Smith, U.S.N. Ret.; Plaintiff's Deposition October 30, 1990 Pg 128, Line 1-13; Plaintiff's Deposition May 16, 1991 Pg 303, Line 5-16, Pg 125, Line 125, Line 13-20, Pg 126, Line6-25, Pg 127, Line 14-25, Pg 128, 12-25.

ACT-OF-SALE DOCUMENTS

Association with the mailings-including signature of Margaret Pearson on same:

Overt & Predicate Acts in furtherance and completion of fraudulent real estate transaction.

2-29-84 Acknowledgment Notation re: to be mailed, signed by Margaret Pearson at act-of-sale. (See Plaintiff's response to W. M. Hingle's Production of Documents 8-2-90, Item 2.)

3-1-84 Closing Documents

(See Plaintiff's response to W. M. Hingle's Production of Documents 8-2-90, Item 3, Survey Map, Item 6, Settlement Statement, Item 7, Agreement to Purchase or Sell, Item 8, Predication Addendum, Item 10, Wood Infestation Report.

3-22-84 Hingle & Mancuso Letter (See Plaintiff's response Mr. Hingle's Production of Documents 8-2#90 Item 1, Letter, Item 4, Title Insurance Policy No AZ 421426 attachment) See Rico Case Statement Pg 4 Line 5(a)(xiii) mailings above – incorrect date ***4-22-84,*** should be 3-22-84 and separate mailings because Letter indicates only 1 attachment.

Acknowledgement predicated on completion ***must*** have been separate mailing to be effective, otherwise served no purpose.

Margaret Pearson's signature appears on the following documents $5,000 Cashier's Check, Original Bid, Predication Addendum, Acknowledgment, and Document Deed. She participated as a **"principle"** prior, throughout, upto and including the Act-of-sale. Defendant Pearson received proceeds of the fraudulent transaction, See Pearson's Deposition March 9, 1990 Pg 93, Line 3-5.

Q. How much did you get paid?

A. I would not have known if I hadn't looked on the recent staement, it was about seven thousand dollars

2.

The Pattern of Racketeering Activity in-continuity mailings:

12-16-87 "Fair Market Value Anylsis" Letter and 2 attachments (See Page 4, Line 5(a)(xvi) herewith

12-27-87

1-24-88

2-28-88

4-3-88 Advertismets, Sentry News (See Page 5, Line 5(a)(xxiii) herewith

3-28-88 Computer Comparables 83/84/85 (See Page 6 Line 5(a)(xxviii) herewith

4-14-89 Letter Defendant's Deposition March 9, 1990 Exhibit #1-A re:

2-16-90 Letter Mailings to Plaintiff's Attorneys Exhibit #6

Additional Mailings:

4-12-88 Listing Cancellation (See Margaret Pearson's Deposition March 9, 1990 Pg 49, Line 24-25; Plaintiff's Deposition October 30, 1990, Pg 117 Line 1-25, Plaintiff's Exhibit List-Additions Item 10.

Conclusion

In 1983-84 Margaret Pearson mailed and was associated with approximately 4 mailings and numerous documents. In pattern and continuity she is sole responsible for approximately 6 mailings in 1987-88.

Margaret Pearson is associated with the mailings and wire and TV communications, **"Predicate Acts"** interstate by C21REC and received income proceeds from this false and misleading advertising i.e. $$7,000.

Total of 10 predicate acts of mail fraud plus the predicate acts of C21REC and all other defendants herein.

Total of 1 overt act is necessary for coconspiracy and/or aiding and abetting. Margaret Pearson's participation in and signature on numerous documents and admitted communications in furtheance of and completion of various schemes. See all Excerpt Exhibits from Defendant's Deposition March 9, 1990 herewith.

Total of 20 overt acts (atleast)

12-26-83 Overt Act Referred Plaintiff to W. M. Hingle as an Attorney (see Affidavit of Sandra Seefled and Admiral J.W. Smith)

12-27-83 Overt Act Received permission to introduce Buyer and Seller in meeting, directly from Don Smart personally.

RICO CASE STATEMENT
Overt & Predicate Acts

Page 1, Line 5(a)(i) 12-26-83

Affidavit of Sandra Seefeld; Affidavit of Admiral John W. Smith, U.S.N. Ret.; Proof Documents – Margaret Pearson's Deposition May 9, 1990 Excerpts Exhibit "___", Background Representation, Pg a. thru f., Excerpts Exhibit "___", Admitted Communications & Overt Acts in Furtherance & Completion of Schemes, Pg 2. thru 12., Excerpts Exhibit "___", Deposition Contradictions, False Statements & Misrepresentations, Pg (I) thru (XII); Defendant's Deposition Exhibits #1 Fair Market Value Analysis 12-16-87 relisting, Notation

> **"My recommendations are in view of the circumstance we list the property for $250,000 – $275,000 to hopefully attract a buyer."**

#2 Original Bid 12-28-83.

Page 2, Line 5(a)(ii) 12-27-83

Affidavit of Sandra Seefeld; Affidavit of Admiral John W. Smith, U.S.N. Ret.; Proof Documents – Margaret Pearson's Deposition May 9, 1990 Excerps Exhibit "___" Background Representation, Pg a. thru f., Excerpts Exhibit "___", Admitted Communications & Overt Acts in Furtherancce & Completion of Schemes, Pg 2. thru 12., Excerpts Exhibit "___", Deposition Contradictions, False

Statements & Misrepresentations, Pg (I) thru (XII); Defendant's Deposition Exhibit #1 Fair Market Value Analysis 12-16-87 relisting, #2 Original Bid 12-28-83; Seller Guy Flannery' Deposition February 26, 1990 Pg 56 Line 20-25, Pg 57 Line 1-6; Deposition Exhibit #13 Pg 2 thru 7, C21 Don Smart & Assoc., Inc. Listings $350,000, and C21 Parker-May & Assoc., Inc. Listings $325,000 Pg 8 thru 11.

Page 2, Line 5(a)(iii) 12-27-83

Affidavit of Sandra Seefeld; Affidavit of Admiral John W. Smith, U.S.N. Ret. Seller Guy Flannery's Deposition February 26, 1990 Pg 56 Line 20-25, Pg 57 Line 1-6; Margaret Pearson's Deposition May 9, 1990 Excerpts Exhibit "___", Admitted Communications & Overt Acts in Furtherance & Completion of Schemes, Pg 2. thru 12.

Page 2, Line 5(a)(v) 12-28-83

Affidavit of Sandra Seefeld; Affidavit of Admiral John W. Smith, U.S.N. Ret.; Proof Documents – Margaret Pearson's Deposition May 9, 1990 Excerpts Exhibit "___", Admitted Communications & Overt Acts in Furtherance & Completion of Schemes, Pg 2. thru 12., Defendant's Deposition Exhibits #1 Fair Market Value Analysis 12-16-87 relisting, #2 Original Bid 12-2883; Seller Guy Flannery Deposition Exhibit #13 Pg 2 thru 7, C21 Don Smart & Assoc.,Inc. Listings $350,000, and C21 Parker-May & Assoc., Inc. Listings $325,000 Pg 8 thru 11.

Page 2, Line 5(a)(vi) 12-29-83

Same as 5(a)(v) above

Page 3, Line 5(a)(vii) 12-30-83

Affidavit of Sandra Seefeld; Affidavit of Admiral John W. Smith U.S.N. Ret.; Margaret Pearson's Deposition May 9, 1990 Excerpts Exhibit "___", Deposition Contradictions, False Statements & Misrepresentations, Pg (I) thru (XII); Defendant's Motion for summary Judgment May 23, 1991, I. BACKGROUND FACTS Paragraph 9 ***Note request admitted; however, date incorrect and attorney name omitted, originally denied.**

Page 3, Line 5(a)(ix) 1-1-84

Affidavit of Sandra Seefeld; Affidavit of Admiral John W. Smith, U.S.N. Ret.; Proof Document W. M. Hingle, Production of Documents June 11, 1990, Plaintiff's Response #1 Item 13. Cashier's Check $5,000 signed by Defendant *Pearson "Received 1-3-84"*.

Page 4, Line 5(a)(xvi) 12-16-87

Affidavit of Sandra Seefeld; Affidavit of Ross Russell; Affidavit of Admiral John W. Smith, U.S.N. Ret.; Proof Document Margaret Pearson's Deposition May 9, 1990 Exhibit #1 "Fair Market Value Analysis" relisting; Excerpts Exhibit "___", Background Representation, Pg (I) thru (XII).

Page 5, Line 5(a)(xvii) 12-18-87

Affidavit of Sandra Seefeld; Affidavit of Ross Russell; Affidavit of Jay Grines; Proof Documents – Margaret Pearson's Deposition Questions at Plaintiff's Deposition Volume II Pg 279, Line 14-25, Pg 280, Line 1-25, Deposition Exhibit #8 with attachment.

Page 5, Line 5(a)(xxiii) 3-1-88

Mailings: Proof Documents – Plaintiff's Deposition May 16, 1991, Vol. II Exhibit #4 Pg Pg 9, Advertisments Dated 12-27-87, 1-24-88 and 2-28-88 Sentry News, Note: **short messages written on back side of each mailing and signed "Marge",** Advertisement Dated 4-3-88 without message; Deposition Pg 117, Line 1-25, Plaintiff's Exhibit List-Additions Item 10, Plaintiffs Deposition Oct. 30, 1990 Vol. I

Page 6, Line 5(a)(xxviii) 3-28-88

Mailing: Proof Documents – 3 Computer Comps re: 1983, 1984, 1985, Deposition Pg 117, Line 1-25, Plaintiff's Exhibit List – Additions Item 10 of Plaintiff's Deposition Oct 30, 1990 Vol I; Referenced Plaintiff's Deposition May 16, 1991, Vol. II, Exhibit #4 Pg 9; Affidavit of Sandra Seefeld; Affidavit of Admiral John W. Smith, U.S.N. Ret.

Page 6, Line 5(a)(xxvii) 3-19-88

Affidavit of Sandra Seefeld; Affidavit of Admiral John W. Smith, U.S.N. Ret.; Affidavit of Ross Russell;

4.

To add to paragraph "26" of the Affidavit to read as follows:

Mr. Flannery originally listed Lots 16 and 17 with Century 21 Don Smart and Associates, Inc. for $350,000.00 in 1982 and with Century 21 Parker-May and Associates, Inc. for $325,000.00 in 1983. Both agencies have listing agreements indicating 10 items and/or service they perform and the most important is establishing

"fair market value". In order to sell the property to uninformed person Mr. Flannery requested that he meet directly with the "interested" party if an offer is less than $300,000.00. Affiant believes this was an excuse for the opportunity to "set-up" the purchaser. Not only was this meeting scheduled between both agencies, but yet another "set-up" with a "third-party" took place later. At the point of the December 30, 1983, After two listing agreements, Mr. Flannery would have to know the current market value of his property. The following is a list of false statements, misrepresentations, omissions and/or concealment of Material Facts by Mr. Flannery thru 1988. These are Genuine Issue of Material Facts.

False Statements:

a. Claimed the subject property was very valuable and worth $300,000 to $400,000 based on offers made in 1979, which indicate it would have increased in value by 1983.

b. Claimed that the "Brown's Village Shopping Center" developers – both the land buyers and the center developers offered him for his property $300,000 and $350,000. This offer was for his property by itself in1979, and that the center (CBL) intended to buy the Holiday Inn and the 40 acres "for sale" therewith.

c. Claimed the owner of the Holiday Inn, Mr.Hulsey was interested in the property of Mr. Flannerys' as additional frontage access to the 40 acres. At the time selling independently from the hotel.

d. Claimed that originally "Browns Village" was going to buy the Holiday Inn and the 40

acres for their development. However, they decided to locate onHighway 11 on the other side of town.

e. Claimed actual offers were made to Mr. Hulsey, Owner of the Holiday Inn.

f. Claimed that other offers and projects would inevitably purchase the 40 acres "for sale" by the Holiday Inn and this site would be needed for frontage, because the 40 acres abuts lots Lots 16 and 17 at the rear.

g. Claimed both Mr. Hulsey and he had personal knowledge of the exit that would be completed the following year; bringing I-10 access, more business and further increase the property value beyond the current worth of $300,000 to $400,000.

h. Claimed the only reason he had to sell and was not able to take advantage of this opportunity was tax problems with the IRS. He could not wait for the exit to be built.

i. Claimed Mr. Hulsey was the owner of the HOliday Inn and two other hotels in Florida. That Mr. Hulsey was an honest upstanding businessman in the community and that I should meet him. Mr. Flannery insisted I meet this person.

k. Claimed Mr. Hulsey also owned the Fidelity Bank (where Mr. Flannery received loans) and couldget me some special financing.

l. Claimed there would be less red tape and things would be handled more quickly with owner-financing.

m. Claimed in 1987 the loss in value from $300,000 or $400,000 he stated at the time of

purchase in 1984, will be recovered when the economic conditions recover and the scheduled exit comes in as previously stated.

n. Claimed Margaret Pearson's 1988 "Fair Market Value" of $211,832 was correct for current conditions. That the value depicts a 30% drop in the area like everyone else was experiencing.

o. Claimed in 1988 the $195,000 appraisal was current value of Lot 16 and 17 for property located in Lindberg Glen. He entered same in Federal Bankruptcy Court. Both Mr. Flannery and his attorney stated in Court and under oath the property dropped 30% in value from the original purchase price. An economic factor he claimed the banks were dealing with.

Omissions:

1. Omission of any reference to his knowledge of any facts concerning "fair market value" of property in the Lindberg Glen area.

2. Omission of his attempt to list property with many agencies who refused or argued vehemently over the listing price.

3. Omission tat this property was listed in 1982 with Century 21 Don Smart and Associates, Inc. and would not sell. That Margret Pearson, buyer's agent was known personally by him.

4. Omission of the actual "fair market values" established by C21 agencies' listings and

and other area brokers who informed him of true value.

5. Omission of the true facts for requiring he meet with the Buyer personally.

6. Omission of the true facts for insisting Buyer meet Mr. Hulsey.

7. Omission and Concealment of true condition of the building and viability of existing structure.

8. Omission and Concealment as contractor that the building was structurally unsound

9. Omission and Concealment that the building was in so many violation of building codes it was not insurable and virtually worthless.

10. Omission and Concealment as contractor that all electrical wires were hung behing one wall panneling in an exposed, taped up glob and a fire hazzard.

    Overloaded Circuits, and hot spots on the grounds were dangerous and never accounted for by Mr. Flannery.

11. Omission and Concealment of rat infestation 1/4/ to 1/2 way up the walls presented a health problem.

12. Omission and Concealment that 5' rafter expansions cause the roof to be unsafe, to be replaced for leaks, would not accomodate insulation, cost a fortune to insulate and heat and cool the building.

13. Omission and Concealment that both the roof and walls leaked and would need to be replaced immediately.

14. Omission and Concealment that plastic sheets underground would cause flooding around and under the building and was not correctable.

15. Omission and Concealment that the water well was not fit to bathe or drink as it was full sand and garbage. The well was either running dry or not deep enough.

Between 1983 and 1990, both Mr. Flannery and Margaret Pearson were involved in the original fraud and all mailings associated with the transactions. In 1987 both parties relisted again using the mails and frudulent claims as to property value. Mr. Flannery has used the US mails in 1990 to repeat the same pattern against other parties. A judgement stands against him for this pattern of activity in 1985 Natures Way Nursery #88021 22JDC.

Mr. Flannery's participation relevant to the required predicate and overt acts are substantial; however the initial mail fraud invovling schemes can be established with the fraudulent listings; the act-of-sale documents and mailings; and continued mailings in the 1987 resale and relising documents and act upon other consumers.

Mr. Flannery was forced to admit no offers took place; however Plaintiff has the original shopping center documents to show how many false statements and misrepresentations were made over the sale of the property. The supporting documents against all of these parties is voluminous – It should also be noted previous counsel has not included all new evidence since since depositions and plaintiff's own investigation. Plaintiff should be

allowed to amend both the complaint and rico case statement to reflect new information and present counsel's theory of this case.

Defendants were further given Plaintiff's RICO note on dates, times, and locations of all false representations (approximate dates and times).

To ad paragraph "34" to the Affidavit to read as follows:

34.

Plaintiff has supplied Waldon M. Hingle with Production of Documents and as per the correction noted in the Rico Case Statement (See Pearson Overt and Predicate Act requirements including "pattern") and the act-of-sale mailings, atleast 2 mailings were made by Mr. Hingle. The numerous overt acts, and "pattern" requirement are satisfied by participation as a "principle" with knowledge in the instant case and others with Century 21 Don Smart and Associates, Inc. and Don Smart personally. These documents were offered to the court with Plaintiff's Affidavit evidencing suits. Response to Hingle's Interrogatories follows.

The cover up of Mr.HIngle in 1990-91 that he was only a notary is untrue; however, despite the unacknowledged Conflict of Interests to Plaintiff, it is not relevant in RICO.

Plaintiff avers the alleged acts or ommissions of Waldon M. Hingle include but are not limited to the following:

1) Omission that a "conflict of interest" existed with Donald R. Smart and Century 21 Donald Smart and Associates, Inc.

2) Omission that a "conflict of interest" existed with Mary Thiels Hingle, wife of Waldon M. Hingle, and employed Century 21 agent for Century 21 Don Smart and Associates, Inc.

3) Upon information and belief, Omission that Waldon M. Hingle, Attorney, was actually "on retainer" to Century 21 Don Smart and Associates.

4) Omission that Mary Thiels Hingle, wife of the Defendant, and Waldon M. Hingle, were participating in the affairs of the enterprise, Century 21 Don Smart and Associates, Inc., and receiving income from same in addition to receiving income from the Plaintiff in the subject real estate transaction and therefore could not represent Plaintiff fairly and impartially.

5) Omission that Defendant and Century 21 Don Smart and Associates, Inc. were involved in other business associations and participating in a pattern of activity in real estate transactions, contrary to Plaintiff's best interests in the subject transaction.

6) Omission and negligence in not advising Plaintiff to seek an appraisal, or discussing benefits of same, or versus "fair market value" opinion.

7) Omission that on January 11, 1984, Defendant requested a Tax Research Certificate, No. 20450, on the subject property showing a vast discrepancy between the assessed

valuation $3,920.00 and the contract sale price of $275,000.00.

8) Omission that Waldon M. Hingle handled act-of-sales in the subject area and was knowledeable the property in question was listed as an extremely excessive over- valuation, and the sale price was excessive and unjust.

9) Omission and negligence in failure to advise Plaintiff on financing involving large down payments, and balloon payments. Furthermore, Defendant should have known raw land value of approximately $65,000.00 per acre, where Plaintiff pays $55,000.00 down payment and the lender financed balance is $220,000.00 is questionalble and unjust enrichment, possibly fraud.

10) Omission of possible safety hazzards, building codes, zoning, electrical, and fire violations, and procedures for inspection on a deteriorated building prior to closing.

11) Omission of possible uninsurability and viability of the existing structure, including Plaintiff's liability for same.

12) Omission of Plaintiff's right and privileges prior to act of sale/closing that would have revealed fraud and limited Plaintiff's losses to $5,000.00 prior to suit.

13) Omission and complete disregard for any standard of care expected from an attorney.

14) Omission of information and/or instruction on obtaining facts on the proposed exit

effecting purchase price and value of property.

Plaintiff avers the alleged misrepresentations by Waldon M. Hingle include but are not limited to the following:

1) Misrepresentation of the payment plan as "looking OK to Defendant" when in fact all indicators pointed to conspiracy, fraud, and an all around bad deal for Plaintiff.

2) Defendant misrepresented the expert advice and care Plaintiff could expect from Century 21 Don Smart and Associates, Inc., when in fact he had knowledge to the contrary.

3) Misrepresented the expertise and trust Plaintiff could expect from Margaret Pearson, agent, for Century 21 Don Smart and Associates, Inc.

4) Misrepresented the quality of advice and standard of care Plaintiff could expect from Waldon M. Hingle's professional services and real estate knowledge.

5) Misrepresented the act of sale/closing to indicate the Sellers were represented by independent counsel and independent Century 21 Parker-May and Associates, Inc.; and that Buyer, Plaintiff, was represented by independent counsel, Defendent, and independent Century 21 Don Smart and Associates, Inc., the latter both acting on Buyer's behalf and in Buyer's best interest.

6) Misrepresented a Statement of Material Fact that Plaintiff need not do anything

further in connection with the sale until closing.

7) Misrepresented a Statement of Material Fact that Defendant had taken care of everything that needed to be don to protect Plaintiff's interests.

8) Misrepresented a Statement of Material Fact that Plaintiff would be in good hands, and that between Defendant and Margaret Pearson, they could handle all necessary details or instruct Plaintiff otherwise.

9) Upon information and belief, Defendant misrepresented his participation and actual solicitation of realators, thereby predominately representing the realator's. interest in opposition to the independent client.

10)

Plaintiff alleges that on or about December 27, 1983, Century 21 Don Smart and Associates, Inc., agent, Margaret Pearson was "put on notice" Plaintiff would need an experienced real estate attorney. Said agent, Margaret Pearson, referred Plaintiff to Waldon M. Hingle, Defendant, solely and specifically, including directions and location etc. Between December 27, 1983 and December 30, 1983, every effort was made throughout the holidays to circumvent the aforementioned with paperwork, more paperwork to counter objections, confusion, enforced Buyer/Seller meeting, switch of agents, mixing paper and agencies, misrepresentations, fraud, omissions, Seller "set-up" meeting and numerous other deceptive sales practices, by all parties including the Seller and a third party.

On or about January 4, 1984 Sandra Seefeld, Plaintiff, contacted Defendant by phone and discussed at length the above situation and the need for professional advise and direction concerning the purchase of the Flannery property. The Defendant acknowledged and agreed to represent and advise Plaintiff in a number of matters including a prenuptial agreement, will, and 1983 Income Taxes.

On or about January 10, 1984 Sandra Seefeld again contacted Waldon M. Hingle by phone and was instructed to meet Defendant at his place of business. All matters of concern regarding the real estate transaction were discussed, including the act of sale/ closing that would be delayed pending the sale of Plaintiff's property in Texas. Defendant said he would contact Century 21 Don Smart and Associates, Inc., agent, Margaret Pearson, for details and direct Plaintiff when necessary. Defendant requested a check in the amount of $150.00 and received same. (Plaintiff does not recall which subject the check covered.)

Between January 10, 1984 and closing, February 29, 1984 numerous telephone conversations by phone and in person took place between defendant and Plaintiff concerning paperwork, problems, questions and reservations, title search and insurance, property survey, termite inspection, water heater and pump, and many statements and prior activities of Guy T. Flannery, Margaret Pearson, and Libby Bentson.

Plaintiff does not recall random calls, times and dates, however, one or two days as many as two or three

calls took place. Defendant always talked to Plaintiff or returned the call promptly.

The pages below are an excerpt of actual pages in Production of Documents to Hingle – wherein is clearly indicates in items mailed at various times and correction needed in Rico Case Statement. However in the Rico Case State indicating one mailing – it is clear the statement itself reflects 2 mailings.

As to the issue if "Conflict of Interests" not acknowledge is a reason for liability in State claims and/or Plaintiff's failure to obtain the attorney prior to signing the offer to purchase, (which was part of the "Bum's Rush") it should be noted there was two months to advise correctly before signing the act-of-sale. Fully advised and knowledgeable I would not have signed.

1. Letter from Hingle & Mancuso to plaintiff, dated March 22, 1984.

2. Acknowledgment by Hingle & Mancuso to plaintiff, with notation by Margaret Pearson made at the closing, mailed March 22, 1984.

3. Survey Map by Borgen Engineering, mailed March 22, 1984 and dated February 28, 1984.

4. Title Insurance Policy No. AZ 421426 by Pontchartrain Title, Inc., from Waldon M. Hingle to plaintiff, dated March 20, 1984.

5. Commitment to Insure from Waldon M. Hingle to plaintiff, dated February 13, 1984.

6. Settlement Statement from closing February 29, 1984, undated.

7. Agreement to Purchase or Sell, Century 21 Parker-May and Associates, Inc., from February 29, 1984 closing, dated December 30, 1983.

8. Predication Addendum from February 29, 1984 closing, dated December 28, 1983, signed by plaintiff on February 20, 1984, and Guy Flannery on December 30, 1983.

9. Agreement to Purchase, Century 21 Don Smart and Associates, Inc., dated December 28, 1983.

10. Wood Infestation Report by Pat McGee Exterminating Co., Inc., dated February 29, 1984.

11. Check to Borgen Engineering, issued at Waldon Hingle's direction and referral, dated February 27, 1984 and receipt for same.

12. Check to Waldon Michael Hingle from plaintiff for $150.00, dated January 10, 1984.

13. Cashier's Check payable to Century 21 Parker-May and Associates, Inc., received by Margaret Pearson, Century 21 Don Smart and Associates, Inc., dated January 3, 1984.

14. Promissory Note for $20,000.00 to Century 21 Parker-May and Associates, Inc., dated December 30, 1983.

15. Check payable to Century 21 Parker-May, dated December 30, 1983.

16. Cashier's check from plaintiff to Hingle & Mancuso, drawn on St. Tammany National Bank, for $51,353.93, dated February 29, 1984.

17. Copy of purchaser's receipt for cashier's check drawn on Bank of Galveston, dated February 17, 1984.

18. Letter from plaintiff to defendant, dated July 26, 1988.

19. Letter from Hingle & Associates, Inc., Linda W. DeLaughter, Real Estate Department, to plaintiff, dated August 1, 1988 and copy of Act of Cash Sale, dated February 29, 1984.

20. Final decree of divorce for plaintiff, dated January 25, 1980.

21. Resolution of "Top O' The Morning" Flower and Garden Center, Inc., dated February 28, 1984.

22. St. Tammany Parish Tax Statement for 1983 Taxes.

23. Tax Research certificate requested by Waldon M. Hingle, dated January 11, 1984.

24. Mortgage certificate, dated January 11, 1984, on Lot 16 & 17.

25. Conveyance certificate, dated January 11, 1984.

26. Mortgage of Claire Olsen and Guy Flannery, dated July 11, 1975.

27. Conveyance certificate, dated July 8, 1975.

28. Mortgage certificate, dated July 8, 1975.

29. Tax research certificate, dated July 9, 1975, Lot 16.

30. Tax research certificate, dated July 9, 1975, Lot 17.

31. Mortgage certificate, dated January 22, 1976.

32. Mortgage Claire Olsen and Guy T. Flannery, dated February 5, 1976.

33. Collateral Mortgage for Claire Olsen and Guy T. Flannery, to Hibernia National Bank, dated March 6, 1989 for Lot 4, Square 6, Grande Hills Estates.

34. Notice of Lis Pendens by Sandra Seefeld on Lot 16 & 17, dated December 19, 1989.

/s/ Sandra Seefeld

Sworn to and subscribed

before me this 14th day

of August 1991.

/s/ James F. Quaid

[SEAL]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD, Plaintiff	*	CIVIL ACTION
	*	NO. 88-5540
versus	*	
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO.	*	SECTION "J"
	*	MAG.DIV. 4

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AFFIDAVIT

BEFORE ME, the undersigned authority, personally came and appeared,

MICHAEL THOMPSON

a person of the full age of majority who declared, under oath to me, Notary, that:

1.

He was a licensed real estate agent with Century 21 Don Smart and Associates, Inc. for a number of years and specifically during the 1983 and 1984 period Sandra Seefeld purchased the Lindberg Glen property on the I-10 Service Road.

2.

During the time he was associated with the firm, Century 21 Don Smart and Associates, INc., he personally delt with Don Smart on a routine basis. Mr. Smart was a "hands on" owner in the company who came into the office at least five days a week.

3.

Don Smart instructed all agents to consult with him directly, if they had any legal questions concerning real estate or contract matters. He further indicated to all agents that in his absence, these legal questions concerning real estate transactions should be directed to Waldon M..Hingle, Attorney. Mr. Smart told his agents Mr. Hingle was the attorney "on retainer" to the company and that was what he was getting paid to do.

4.

He personally liked Don Smart, however, he did not agree with, or approve of the manner in which he did business from an ethical standpoint. His personal experience with Don Smart involved two such incidences at Century 21 Don Smart and Associates, Inc. First, his client, Angelo Puglise, was known for his interest in purchasing corner/intersection property only. He wrote a contract for a parcel of land owned by Don Smart and his partners, Bennie McDaniel, George Reine and Walter

Shellhause. The aforementioned partners in the investment real estate, were made aware of the fact only intersection land was of interest to Mr. Puglise. A contract was written on the 8 acres, located at I-59 and Pearl River. Don Smart and his partners concealed the material fact and/or did not make it known that in fact the property did not encompass all the land to the intersection. A last minute survey of the property by the purchaser, revealed that the acreage did not include the corner. Upon confronting Mr. Smart, he was informed they did not want to give back the earnest money; until I assured them Mr. Puglise would sue them and he would be a witness for Mr. Puglise. He then chose to return the earnest money.

5.

He was personally involved in another transaction concerning property he owned and listed with Century 21 Don Smart and Associates, Inc. Gary Kreitz, manager of Century 21 Don Smart and Associates, Inc., called to make an offer on his property for approximately $55,000.00. At the time, he was not interested in selling for this price. Mr. Kreitz intimidated and "high presured" him to believe the property was not worth any more than his offer. At the time, real estate was selling very well, and he knew that the property, 3.4 acres on Hwy 190, was worth more just from his own experience in the business. Approximately 3 hours later, he was informed the Presbyterian Church had made an offer for his property of approximately $85,000.00. This offer direct from the church was accepted and he sold the property to them.

6.

He was also a witness to Margaret Pearson's entrance into Century 21 Don Smart and Associates, Inc. after it was learned she sold the Flannery property to Sandra Seefeld. Agents were extremely excited about the sale and the price it brought, because of the fact that it had been listed for some time and without much activity. Agents were inquiring if the person from Texas was an "oil person" or rich to have paid that much money for that piece of property. Rumors and questions and disbelief by agents confronted Mrs. Pearson over the sale and particularly the price paid. It was hard for numerous agents to believe she sold it on those terms. All of the real estate agents were aware the property was listed at an excessive price and knew it had been listed with Century 21 Don Smart and Associates, Inc. and no one could sell it.

7.

To the best of his recollection, Don Smart was involved in the daily routine of the office affairs and during most of the time between December 1983 and February 1984, in which the sale of this property to Ms. Seefeld was transacted. Doug Bernard was the manager at the time. It is his experience personally as described above, that the type of activity described by Sandra Seefeld and him did take place at Century 21 Don Smart and Associates, Inc. He firmly believes that if a survey on the propery his client contracted for, had not taken place, he

would have signed a contract unaware of the true facts on the property owned by Don Smart and his partners.

8.

He is the owner of property directly across the I-10 from the subject property of this litigation. He purchased Lot 29 in Lindberg Glen on the Service Road in April of 1985. This was an active and high market value period of time and he paid $2.95 per square foot for the property. He was an agent and knowledgeable of property values in 1983 when Ms. Seefeld purchased Lots 16 and 17. Comparable land in Lindberg Glen between 1981 and 1983, a less active real estate period, would not justify the "Flannery" listing for over $6.00 per square foot. He is not an appraiser, however he has reviewed the Max Derbes appraisal which Ms. Seefeld had on the property. He is aware his property is listed as a comparable along with numerous others in the Lindberg Glen Subdivision and on the Service Road. They adequately represent comparables to the subject property which he would have had access and knowledge of as an agent. This information is available to agents at Century 21 Don Smart and Associates, Inc. and Margaret Pearson would have access to this knowledge that many comparables existed in the Lindberg Glenn area and near to the subject property.

9.

He and Carrol St. Pierre had occasion to visit Mr. Flannery in 1988, when the property was again listed "for sale" by Mr. Flannery who was at the time a real estate agent with Prudential. At the time, the property was also

listed with his Broker, Merril Lynch, for approximately $250,000.00. In 1984 property sold next door for $55,000.00 and further down the road on each side for $38,000.00 and up to $3.00 per square foot approximately. Mr. Flannery told us his property was valued up to $300,000.00 and justified the $3.50 per square foot price for land only by a recent appraisal from Leader Realty. This is taking the recent oil and economy crash into consideration according to his figures. Ms. St. Pierre wanted to see the appraisal and Mr. Flannery indicated she could look at it but could not make a copy of it. He encourage us to meet him that afternoon at the Holiday Inn to go over the appraisal. Ms. St. Pierre and he recognized many of the false statements about property and the building that Sandra Seefeld claimed including the requests to meet him at the Holiday Inn. They did not pursue the matter, however Ms. St. Pierre had a detailed documentation of the meeting in her possession.

10.

He is familiar with the plaintiff, Sandra Seefeld, and has had a business relationship with her for a number of years. She has purchased antiques from him on credit and he has found her to be an honest and reputable person in her business dealings with him. He personally witnessed the long hours of labor she put into the building and creation of the museum, decor, products and purchase of expensive items for this – tourist attraction. Over the four years she worked out of the building he knew her as an artist involved in the design of dolls, toys, sculptures, and various art projects and paintings.

AFFIDAVIT

BEFORE ME, the undersigned authority, personally came and appeared,

MICHAEL THOMPSON

a person of the full age of majority who declared, under oath to me, Notary, that he has read the above AFFIDAVIT; and that all of the facts contained therein are true and correct to the best of his information, knowledge and belief.

/s/ Michael L. Thompson
MICHAEL THOMPSON

/s/ Tony Puglise

Sworn to and subscribed

before me this 8/12/91 day

of August 1991.

/s/ James F. Quaid

[SEAL]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD, Plaintiff	*	CIVIL ACTION
versus	*	NO. 88-5540
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON M. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO. Defendants	*	SECTION "J" MAG.DIV. 4

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AFFIDAVIT

BEFORE ME, the undersigned authority, personally came and appeared,

JOHN W. SMITH

a person of the full age of majority who declared, under oath to me, Notary declared that:

On or about the 3rd day of December, 1983, my intended wife, Sandra Seefeld and I had an consultation with Max Nathan, Jr., Attorney, to discuss Louisiana community property law in relation to wills, forced heirship, separate property and prenuptial agreements.

On or about the 28th day of December, 1983, I was present at my home at a conversation between Sandra

Seefeld and Margaret Pearson concerning the employment of an attorney. Sandra Seefeld expressed concern about obtaining legal advise about the contemplated purchase of real estate, personal business, income taxes, wills, forced heirship and prenuptial agreements. Margaret Pearson recommended Waldon M. Hingle using such descriptive words as *"highly recommended"*, *"expert real estate attorney"* and *"up and coming young lawyer"* in her recommendation. Margaret Pearson further volunteered that Waldon M. Hingle was also a CPA. She described how to get to his office. She never mentioned the fact that Mr. Hingle had personally represented her or that he was on retainer to Century 21 Real Estate Don Smart & Associates.

On or about the 3rd day of January, 1984, I caused to have drawn Cashier's Check No. 1292424 on the First National Bank of Commerce made payable to Century 21 Parker-May in the amount of $5,000 and the receipt of which was acknowledged before me by Marge Pearson on the same date, a copy of which is annexed to this Affidavit and made part as if copied herein in extenso.

That in March, 1984, we consulted again with Waldon M. Hingle concerning real estate, personal business,

income taxes for the year 1983, wills, forced heirship and prenuptial agreements.

/s/ John W. Smith
JOHN W. SMITH,
Real Admiral, USN Ret.

Sworn to and subscribed
before me this 14th day
of May 1991.

/s/ James F. Quaid
Notary Public

[SEAL]

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WALDON MICHAEL HINGLE, J.D., C.P.A.
PAMELA JEAN LEGENDRE, J.D.*
*ALSO ADMITTED IN NEW YORK

MAILING ADDRESS
P.O. BOX 1129
SLIDELL, LOUISIANA 70459

January 18, 1985

Sandra Seefeld
John Smith
113 Rue Holiday
Slidell, Louisiana 70461

Re: Marriage Contract and Various Consultations
regarding Louisiana Law
H & L : Smith #

FOR PROFESSIONAL SERVICES RENDERED:

Various office consultations with Sandra Seefeld to discuss Louisana law, Louisiana community property, the distinctions between separate and community property and how various items of property are treated; these conferences were on a number of different days involving these general topics; additional consultations with Sandra Seefeld to discuss her business property and other various aspects of her separate property; joint consultations with Mr. Smith and Ms. Seefeld to discuss the issues of Louisiana community property law and separate property together with discussing marriage contract and other marital issues.

(5 hrs @ $75.00 per hr.) $375.00

Preparation of marriage contract, review of same with clients and execution of marriage contract and recording of same.

Fee: 275.00

Preparation of declaration establishing paraphernality of property and recording of same.

Fee: 75.00

COSTS ADVANCED:

Xerox Copies 40 @ .20 each	8.00	
Clerk of Court	13.00	
TOTAL COSTS ADVANCED		21.00

TOTAL DUE HINGLE & LEGENDRE $746.00

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA SEEFELD	CIVIL ACTION
VERSUS	NO. 88-5540
CLAIRE OLSEN, wife of/and GUY T. FLANNERY; MARGE PEARSON; CENTURY 21 REAL ESTATE CORPORATION; DON SMART AND ASSOCIATES, INC.; CENTURY 21 PARKER-MAY ASSOCIATES, INC.; WALDON B. HINGLE, ABC INSURANCE CO.; XYZ INSURANCE CO.; CDE INSURANCE CO.	SECTION "J"

ORDER AND REASONS
(Filed Aug. 28, 1991)

This matter is before the Court on the motions of the remaining defendants for summary judgment and the plaintiff's motion to reconsider the Court's earlier dismissal of defendants Hingle, Smart and Pearson. Also before the Court is the plaintiff's motion to compel discovery responses.

FACTS

In December of 1983, Sandra Seefeld (plaintiff) contracted to purchase a 1.3 acre tract of land in Slidell, Louisiana, from Claire Olsen and Guy Flannery (The property). The purchase price was $275,000. The only improvement on the property was a building that had

been used in the former owner's wholesale florist business. Plaintiff planned to use the property as the site of a combination art gallery, museum and antique store. Plaintiff closed on the property in February 1984 and began work on her business, the "Musee de Masquerade-Ghost Mart."

Although the record reflects different views on why the business was not financially successful, it is clear that plaintiff ran into financial difficulties. In 1988 plaintiff, under threat of foreclosure, closed the business and dationed the property back to the seller.

On December 16, 1988, plaintiff brought a Civil RICO action under 18 U.S.C. § 1962(a) and (c) alleging that various parties had conspired to sell property at inflated values in order to fraudulently drive up area property values and thereby increase their commissions. Plaintiff's claims against the individual parties, and their role in the alleged scheme are briefly as follows,

> CLAIRE OLSEN wife of/and GUY FLANNERY The Flannerys were the sellers of the property. The Flannerys purchased the property in 1975 for $22,500. Plaintiff claims the Flannerys represented to her that the property was worth $300,000 to $400,000 based on offers made in 1979 in conjunction with the possible development of a shopping center. The Flannerys also allegedly claimed that an exit off the interstate highway was to be built. The plaintiff also alleges that the Flannerys omitted material information about the property and improvement.
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> The Flannerys "owner financed" the property, and mailed plaintiff the act of sale. When

plaintiff fell in arrears, Mr. Flannery mailed collection notices. Plaintiff avers that this use of the mails constituted predicate acts under 18 U.S.C. § 1962(c).

Plaintiff also refers to other real estate transactions engaged in by Mr. Flannery. The Flannerys' motion for summary judgment is before the Court.

MARGE PEARSON Pearson, a real estate agent with Don Smart & Associates, was plaintiff's agent in the 1983 transaction, and again represented plaintiff when the property was resold in 1988. Plaintiff claims Pearson: 1) falsely represented to her the value of the property; 2) claimed the value of the property was fair because of the impending arrival of the World's Fair and the new interstate exit; 3) claimed she was using comparables from the same sub-division, when other property had not sold for such high prices; and 4) claimed that the drop in price between 1983 and 1988 was due to general decline in property values in the South Louisiana region. Pearson mailed plaintiff several brochures on Century 21.

Additionally, Pearson is alleged to have made several misrepresentations and omissions to plaintiff regarding the fact that the attorney who would handle the closing was on retainer with Don Smart & Associates. The Court granted Pearson's motion for summary judgment on June 12, 1991.

CENTURY 21 REAL ESTATE CORPORATION The plaintiff's claims against Century 21 center upon its nationwide television and print advertisements which extolled the trustworthiness of its affiliates and their brokers. Discovery

has shown that Century 21 is not a real estate broker, but rather a franchiser of a name and advertising package. Century 21 has a motion for summary judgment before the Court.

CENTURY 21 REAL ESTATE OF NORTHERN TEXAS, OKLAHOMA AND ARKANSAS (CENTURY 21 SOUTH CENTRAL STATES) Collected franchisee fees and a service fee equal to 6% of the revenue of its franchisees, including Parker-May and Don Smart. Promoted interstate advertising and dervived a profit from the franchisees fraudulent acts.

Century 21 South Central States has not moved the Court for summary judgment, but the Court notes this party was only recently served and has moved for time to file responsive pleadings.

DON SMART AND ASSOCIATES Don Smart is the owner of the real estate company whose agent represented plaintiff. Plaintiff alleges that the property was previously listed with Smart, but did not sell. Thus, Smart should have known that the property was overvalued. Plaintiff has submitted to the Court allegations of other real estate transactions engaged in by Smart that were less than forthright. However, plaintiff has not shown any evidence relating these prior transactions to the sale of property at issue here. She was unable to relate these prior dealings to an overall scheme to inflate property values and was unable to identify an "enterprise." On these grounds the Court granted Smart's motion for a summary judgment on July 9, 1991.

CENTURY 21-PARKER-MAY & ASSOCIATES The listing agent for the property. Derived funds from the 3% commission on the

sale of the property. Alleged to have over-valued property.

LIBBY BENTSON The selling agent for Parker-May. Mailed documents associated with the act of sale. Bentson is alleged to have profited from the increased commissions obtained by over-valuing the property. Benston has a motion for summary judgment before the Court.

WALDON M. HINGLE Hingle was the closing attorney/notary at the act of sale. Plaintiff alleges she expressed concern about the purchase of the property and various other legal matters to Pearson. Pearson recommended Hingle without, allegedly, telling plaintiff that Hingle was on retainer to Smart & Associates and that Hingle had previously represented Pearson in a divorce. Plaintiff also claims several omissions on Hingle's part. The Court granted Hingle's motion for summary judgment on April 17, 1991.

II

At the outset, it should be noted that discovery has been ongoing for two-and-one-half years. Plaintiff has been given the opportunity to amend her RICO case statement, and yet has still failed to allege with specificity, anything more than conclusory allegations against the various defendants. In its minute entry of March 19, 1990, the Court denied the Flannerys' motion for judgment on the pleadings, finding that the plaintiff had

stated a claim against defendants.[1] Plaintiff was subsequently ordered to amend her complaint to comply with this Court's standing RICO order.[2]

Plaintiff argues that this supports her contention that she has a cause of action against all defendants, and that the Court was in error when it dismissed Hingle, Smart and Pearson. However, to dismiss an action on the pleadings under F.R.C.P. rule 12(b)(6) the Court must be absolutely certain that there is no possibility that a cause of action exists. When granting a motion for summary judgment, the Court has the benefit of looking beyond the pleadings to submitted facts and evidence.

Summary judgment must be granted when there is no genuine issue of material fact such that the moving party is entitled to judgment as a matter of law. F.R.C.P. 56(c) Rule 56(c) mandates summary judgment if a party fails to establish the existence of an element essential to its case and on which it has the burden of proof. *Celotex Corp. v. Cateret*, 106 S.Ct. 2548, 2553-54; *Davis v. Illinois Central R. Co.*, 921 F.2d 616 (5th Cir. 1991).

Plaintiff's burden here is to show that a conspiracy existed among the defendants to raise real estate prices in the Slidell area. To support a Civil RICO claim, plaintiff must show more than an attempt to defraud her; she must show that a dispute exists that the defendants were part of an enterprise engaged in activities, the predicate

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[1] Minute entry of March 1, 1990 [Document 4].

[2] Minute entry of September 12, 1990 [Document 81].

acts of which amount to or threaten long term criminal activity. *H.J. Inc. v. Northwestern Bell Telephone Co.*, 109 S. Ct. 2893, 2901 (1989).

An enterprise is "an association in fact" which must meet three requirements; (1) it must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization, and (3) its members must function as a continuing unit as shown by a hierarchical or consensual decision making structure. *Delta Truck & Tractor, Inc. v. J.I. Case Co.*, 855 F.2d 241 (5th Cir. 1988).

Here, plaintiff has failed to show that the various defendants had any relationship other than that inherent in the fact that they were all engaged in the real estate business in the same area. Thus, plaintiff has failed to show that an enterprise existed.

Plaintiff presumably asserts that Century 21 is the enterprise, and that the other defendants were the actors. Plaintiff claims that Century 21 furthered the "scheme" by their advertising which instilled a sense of confidence in its agents, allowing them to sell at inflated values and thus reap larger fees. Plaintiff has not met her burden of proof in showing that a dispute exists that Century 21, either through its main office, its Midsouth intermediary or its agent, Parker-May, performed any acts directed at fraudulently increasing Slidell land prices.

Additionally, it is well settled that a legal enterprise is not liable under 18 U.S.C. § 1962 for predicate acts performed by their employees or agents. *Landry v. Air Line Pilots Association International*, 901 F.2d 404, 424 (5th Cir. 1990). Thus, the Court finds that plaintiff has failed to

set forth facts that, even if taken as true, would demonstrate the existence of a RICO enterprise.

The second burden plaintiff carries is to show at least a threat of continued illegal activity. This can be shown by sufficient past predicate acts. Plaintiff, in her amended RICO statement, sets forth as predicate acts the numerous telephone calls and mailings that occurred between the parties. The Court first notes that the telephone calls were intrastate, not interstate, in nature. In *H.J. Inc.*, the Supreme Court held that it is the nature of the acts forming the basis for the RICO complaint, rather than an arbitrary number of acts, which is dispositive of the issue. 190 S. Ct. at 2901-04[3]

All of the incidents that plaintiff refers to as predicate acts were part and parcel of a single real estate transaction. Thus, plaintiff has not alleged with specificity a continued pattern of racketeering activity. *See Howell Hydrocarbons v. Adams*, 897 F.2d 183, 190 (5th Cir. 1990).

Plaintiff has alleged that certain defendants have previously been involved in other real estate deals that involve unsavory practices. However, plaintiff has totally failed to allege facts that, even if accepted as true, would link the prior transactions with the instant transaction to form a scheme.

After multiple amendments of the pleadings, plaintiff has failed to allege facts that demonstrate the existence of

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[3] The Court construes this as effectively supplanting the Fifth Circuit's contrary holding in *R.A.G.S. Couture Inc. v. Hyatt*, 744 F.2d 1350, 1355 (5th Cir. 1985).

an enterprise and the existence of predicate acts sufficient to establish a thread of continued criminal activity.

Accordingly, the Court **DENIES** the plaintiff's motion for reconsideration of the granting of summary judgment to defendants Hingle, Smart and Pearson. The Court **GRANTS** the motions for summary judgment of defendants Century 21 Real Estate, Claire Olsen, wife of/ and Guy Flannery, and Libby Bentson as to the RICO claims. The RICO claims against Century 21 South Central States, Inc. and Parker-May Associates, Inc. are **DISMISSED** under F.R.C.P. 12(b)(6) based on plaintiff's failure to state a cause of action against these defendants in the pleadings. The Court declines to use its ancillary jurisdiction over the state law fraud claims; these claims are **DISMISSED** without prejudice. The counter claim of defendants Olsen and Flannery is **DISMISSED** without prejudice. The motion of defendant Hingle for Rule 11 sanctions is **DENIED.** The plaintiff's motion to compel discovery is dismissed as **MOOT.**

New Orleans, Louisiana, this 28th day of August, 1991.

/s/ Patrick E. Carr
UNITED STATES
DISTRICT JUDGE